

945.

MUNICIPAL CIVIL SERVICE COMMISSION—ALSO CIVIL SERVICE COMMISSION OF CITY SCHOOL DISTRICT—WHAT POSITIONS IN CLASSIFIED CIVIL SERVICE AND WHAT POSITIONS EXEMPT FROM CLASSIFIED SERVICE—PAY ROLL OF THOSE IN CLASSIFIED SERVICE SHALL BE APPROVED BY MUNICIPAL CIVIL SERVICE COMMISSION—WHAT DIRECTORS OF SCHOOLS ARE RECOGNIZED BY STATUTE.

1. *Under section 486-8 G. C. the municipal civil service commission in each city in the state is the civil service commission of the city school district in which such city is located, and such municipal civil service commission has authority to conduct examinations for all positions and employments under the board of education of such city school district unless the positions clearly come within the exemptions mentioned in section 486-8 General Code.*

2. *In city school districts all persons in the employ of the board of education of such city school district are in the classified civil service unless they are directors, superintendents, principals, instructors or teachers, as provided in paragraph 7 of section 486-8 G. C.*

3. *The director of the vocation bureau in a city school district is not the head of a principal department in such city school district and hence the person in charge of the vocation bureau is in the classified civil service and subject to examination by the city civil service commission. The secretary of the placement office and the psychological laboratory assistants in the vocation bureau in a city school district are not "teachers connected with the public school system" (section 486-8 G. C.) and hence are in the classified civil service of the city school district in which they are employed and subject to examination by such civil service commission.*

4. *In any city school district of the state it is unlawful for the fiscal officer of such city school district to issue any warrant on the disbursing officer of such city school district to pay any salary or compensation to any employe in the classified service, unless such payroll has been approved by the municipal civil service commission of the city in which such city school district is located, as provided in section 486-21.*

5. *The directors connected with the public school system, mentioned in paragraph 7 of section 486-8 G. C., are the directors of schools in city school districts, as provided for in section 7695, 7696, 7697 and 7698 G. C., and the statutes do not recognize any other kind of director in connection with the public school system of the state.*

COLUMBUS, OHIO, January 15, 1920.

HON. F. B. PEARSON, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter of recent date, which reads as follows:

"Enclosed is a communication from the superintendent of schools, city of C., Ohio, which contains a request for an opinion asking if they have the right to designate the director of their vocation bureau, secretary of the placement office, and their laboratory assistants as teachers, to grant them teachers' certificates and to pay them from teachers' funds. The letter will give you, I think, the necessary explanatory data."

Attached to your request for the opinion of this department upon the matter at hand are the following exhibits:

(A) An explanatory letter from the superintendent of schools of the city of C., dated November 8, 1919.

(B) A mimeographed sheet stating the names of the incumbents and their training and the duties of the positions of director of vocation bureau, assistant director of vocation bureau, psychological laboratory assistant, secretary of the placement office, employment certificate assistant in the placement office, and social investigator.

(C) A letter from the civil service commission of the city of C. dated September 13, 1919, and addressed to the clerk of the board of education of the city of C. upon the question of the civil service status of employes in the vocation bureau.

(D) A second letter, dated September 13, 1919, from the secretary of the civil service commission of the city of C. to the clerk of the board of education of said city, also speaking of the payroll of employes—vocation bureau.

(E) A closing letter from the secretary of the civil service commission of the city of C. to the clerk of the board of education of said city upon the subject of payroll of employes—vocation bureau.

(F) The official bulletin of October, 1919, (No. 10, Vol. 4) issued by the civil service commission of the city of C., Ohio.

The above letters and exhibits have been carefully examined by this department in order to ascertain the duties of the director of the vocation bureau, secretary of the placement office and laboratory assistants, in order to determine whether they come within the classified civil service of the state or whether they are exempt under certain provisions of the civil service law of Ohio. In his letter of November 8, 1919, the superintendent of schools of the city of C. says that they desire to have established the right of the board of education to designate the incumbents of these three positions

“as teachers, to grant them teachers’ certificates and to pay them from teachers’ funds. They are engaged in educational work with children, are directing their work along vocational and academic lines, are helping to place them in positions and are supervising and following up their work for vocational and educational purposes.

That you may have a clear idea of their qualifications and duties, I am enclosing a statement about each member of the staff to whom we desire to grant certificates and pay from the tuition fund. They are already graded as teachers in regard to salaries, terms of work, vacations, etc. The matter came to a head when we designated the qualifications of a psychological laboratory assistant as ‘college graduation with psychological training,’ etc. The civil service commission changed it to ‘high school graduation’ and stated that they were not obliged to take our requirements, but could fix their own.

I made the following recommendation to the board of education on June 9, 1919:

*Vocation Bureau*—In view of the fact that the directors and laboratory assistants are rated as teachers so far as their pay, annual increase and character of work are concerned, and that the same or higher qualifications than those set up for teachers are required for appointments in this department, I recommend that they be classed as teachers, that they be given teachers’ certificates, and that their salaries be charged against the tuition fund, and that the finance committee be instructed to include in the

tuition fund the budget for 1920 for such directors and laboratory assistants, the stenographers and clerical workers to be paid as at present from the contingent fund.'

This was approved by the board. The clerk informed the civil service commission of this action, whereupon they sent the enclosed letter of September 13. \* \* \*

If we can legally make the change we desire to do so, since our problem of administering this branch of the service will be rendered more simple and, we believe, more effective. Otherwise, I shall want to recommend to the board of education that they rescind their action \* \* \*."

It is therefore necessary to refer to the duties of the positions of the director of the vocation bureau, secretary of the placement office and the laboratory assistants as established in the mimeographed copy furnished as an exhibit. These duties are as follows:

*Director of Vocation Bureau.*

*Duties of Position:* To plan and supervise the work of the Child study laboratory, the Child labor department and the placement office.

*Secretary of Placement Office.*

*Duties of Position:* \* \* \* has charge of the issuing of employment certificates and the placing in industry of children who are leaving school. \* \* \* consults with the teachers about the qualifications of children, and with employers about their requirements for positions. \* \* \* conducts educational propaganda about the value of education to children; helps select promising children who should be recommended for scholarships to enable them to complete a high school education; keeps statistics of cases handled, wages and conditions of employment, and of employers served by the office; arranges for co-operation with attendance officers, factory inspectors, and suitable private agencies such as the Consumers League and the Child Welfare committee.

*Psychological Laboratory Assistant.*

*Duties of Position:* To give psychological tests to school children or other persons referred to the laboratory for mental diagnosis. The psychological laboratory assistant secures an educational history of the cases, gives educational tests as well as mental tests, and consults with the principals, teachers and social investigator about the disposition of the case. The assistant consults with the director about cases which present special difficulties."

The question before us is whether these employes, having the duties above designated and employed by the board of education of a city school district, are in the competitive classified service, or whether, on the other hand, they can be called "teachers," certificated as teachers, be exempt from civil service and paid from tuition funds rather than from contingent funds.

It appears that the city civil service commission of the city of C., which commission is under the law the civil service examining board of the city school district of C., even though the same is a charter city, has held that these employes are in the classified civil service, that they are not teachers and that the payrolls covering their employment must be submitted to the city civil service commission for approval under the civil service act of the state. On the other hand, the board of education of the city school district in question has declined to furnish the pay-

roll of these employes to the city civil service commission for its approval, but has held that inasmuch as they are rated as teachers so far as their pay, annual increase and character of work are concerned, and that the same or higher qualifications than those set up for teachers are required for appointments in this department, that these employes be classed as teachers, that they be given teachers' certificates and that their salaries be charged against the tuition fund, and that the finance committee be instructed to include in the tuition fund (budget for 1920) provision for such director and laboratory assistants, while the stenographers and clerical workers in the vocation bureau shall be paid as at present from the contingent fund.

Pertinent parts of one letter from the civil service commission of the city of C. to the board of education of such city are herewith given :

"Under the provisions of this law (Section 486-8 General Code) the commission determines who is in the classified and unclassified service, and from the result of an investigation of the duties of these positions they have been placed in the classified service." (Letter of September 13, 1919).

The above statement of the city civil service commission is not wholly true in saying that the commission determines who is in the classified and unclassified service, but only in the degree that the commission must exempt from the classified service all those employments which come within the exemptions set out in section 486-8 (a).

"The power of the civil service commission to classify positions is subject to a limited judicial control. As to some positions it can be determined as a matter of law that it is impracticable to hold examinations therefor. Where this is doubtful it is left to the determination of the civil service commission." Opinion of Attorney-General May 28, 1914.

"You are further advised that the disbursing officer of your board has been ordered to withhold payment of the salaries of this department unless the payrolls are approved by this commission in accordance with section 486-21, civil service law."

It will be noted in the above statement that the civil service commission refers to the employes under discussion herein as being in a "department," whereas they are in what is known as the vocation bureau. This bureau seemingly has a head who is called the director of vocation bureau and it must be said that if this bureau is a department, as used by the civil service commission in its letter, then the director of such vocation service might be exempt from the classified service under paragraph 3, section 486-8 (a), which, in naming positions in the unclassified service, says :

"3. \* \* \* and all heads of departments appointed by the \* \* \* chief appointing authority of any \* \* \* city school district \* \* \*."

It is not believed that the vocation bureau in the public school system of the city of C. can be called a department in its full legal sense, for the attorney-general, in an opinion rendered December 27, 1913, used this language in referring to a certain branch of the city government :

"The city engineer is not at the head of a principal department \* \* and is therefore in the classified service."

It is not the contemplation of the civil service law that any board, commission or head of a department shall create a number of subdivisions covering minor activities and then call them departments in order to come within the exemptions mentioned in section 486-8 G. C. As pointed out by the attorney-general in his opinion of December 27, 1913, what is meant in the exemptions under section 486-8 is the head of a principal department, that is, a department about which there could be no question but what it was a department in the full sense, as contemplated by law.

There has heretofore been given a synopsis of the duties of the persons occupying the positions of director of the vocation bureau, secretary of the placement office, and the psychological laboratory assistants, and in the light of the duties attaching to such positions, must be considered the question as to whether they are in the classified service and under the direct control of the city civil service commission of the city which is a part of the city school district.

Bearing directly upon this point, the civil service act says:

"Section 486-8. (SERVICE—CLASSIFIED AND UNCLASSIFIED DEFINED.) The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) (Positions in unclassified service). The unclassified service shall comprise the following positions which shall not be included in the classified service, and which shall be exempt from all examinations required in this act. \* \* \*"

7. All presidents, directors, superjntendents, principles, instructors and teachers connected with the public school system, colleges and universities. \* \* \*"

The exemptions mentioned in paragraph 7, above quoted, are the only ones that can be considered as bearing either directly or indirectly upon the question at hand. Clearly the director of the vocation bureau, the secretary of the placement office and the psycholological laboratory assistants are neither superintendents or principals; and then if they are to be in the unclassified service, they must be, under paragraph 7, either directors or instructors or teachers, as contemplated by law. The statement of facts before us shows that the director of the vocation bureau is not a teacher or instructor, because his duties are "to plan and supervise the work of the child study laboratory, child labor department and the child placement office." The statement also shows that the duties of the secretary of the placement office are not the duties of a teacher or instructor, but rather of an employe of the board of education in a city school district, which class of school district is under the law within the control, as regards its employes, of the civil service act of Ohio. The statement further shows that the duties of the psychological laboratory assistants are not those of a teacher, but the duties are "to give psychological tests to school children or *other persons* referred to the laboratory for mental diagnosis." Seemingly, then, none of these three positions come within the exemptions provided within the civil service act, unless the director of the vocation bureau is one of the directors mentioned in paragraph 7 of section 486-8 G. C., *supra*.

In construing such paragraph and all of the sections of the civil service law, due regard must be had for the other statutes bearing on positions and employments in the school system. There is a tendency, when any new activity is started in a public school system or otherwise, to call the head of such activity a director, a supervisor or some other title chosen on the spur of the moment, as fitting the

case; but the law can take no notice of such titles but must consider the words director, superintendent, principals and teachers in the light of other sections of the statutes which give a clear view as to what class of persons are the ones that are meant when these terms are used.

While the director of the vocation bureau has been called a director by the educational organization of the city school district of C., he is not a "director" as used in paragraph 7 of section 486-8 G. C., for the Ohio statutes have specifically provided for the office of director of schools and there is but one kind of director connected with the Ohio school system as at present arranged, and that director is the person who has been elected by the board of education as its business agent or its executive officer, that is, the person who constitutes the point of contact between the board of education and those with whom it deals in a business way through its authorized agent. Section 7694 G. C. provides:

"A board of education in a city school district may elect a director of schools, who shall serve as such for the term of two years, unless earlier removed. A vacancy in this office shall be filled for the unexpired term thereof."

In the above section, providing for the election of the director of schools, such director is given a definite term, with the chance of removal and the filling of an unexpired term, which clearly indicates that he is not in the classified service. The duties of the director of schools as contemplated in Ohio law are set out in sections 7695, 7696, 7697 and 7698. His main duties appear in the following two sections as amended in 107 O. L., page 48:

"Section 7695. As director of schools he shall execute for the board of education, in the name of the school district, its contracts and obligations, except that bonds issued must be signed by the president of the board, and attested by the clerk. He shall see that all contracts and obligations, except that bonds issued must be signed by the president of the board, and attested by the clerk. He shall see that all contracts made by or with such board are fully and faithfully performed. Except teachers, assistant teachers, supervisors, principals, superintendent of instruction, clerk of the board of education, such director shall have the appointment subject to the approval and confirmation of the board of all employes and may discharge them; provided that if the board has adopted an annual appropriation resolution as provided by section 4752-1 of this act, the board may, by general resolution, provide that such appointment shall not be required to be approved or confirmed by the board if provision therefor has been made in such annual appropriation resolution. He shall have the care and custody of all property of the school district, real and personal, except moneys, oversee the construction of buildings, in the process of erection, and the repairs thereof, and advertise for bids and purchase all supplies and equipment authorized by the board."

"Section 7696. Such director shall report to the board monthly, and oftener if required, as to all matters under his supervision, and report to the board a statement of its accounts, exhibiting the revenues, receipts, disbursements, assets and liabilities, the sources from which the revenues and funds are derived, and in what manner they have been disbursed. He shall keep accurate account of taxes levied for school purposes, and of all moneys due to, received and disbursed by the board; also, of all assets and liabilities and all appropriations made by it and receive and preserve all vouchers for payments and disbursements made to or by the board. He must

issue all warrants for the payment of money from the school fund, but no warrant shall be issued for the payment of any claim until it has been approved by the board; provided that if the board has adopted an annual appropriation resolution as provided by section 4752-1 of this act, then the board may, by general resolution, provide that such warrant need not be approved by the board but shall be approved by the auditor of the board, if the expenditure for which such warrant is issued is provided for in such annual appropriation resolution. The payroll for teachers, assistant teachers and supervisors must be countersigned by the superintendent of instruction. Such director shall attend all meetings of the board, and perform all of its executive functions not hereinbefore excepted in defining the duties of the director of schools. He must devote such portion of his time to the duties of his office as is required by the board of education at or before his election and give bond for the faithful discharge of his duties as director of schools, in such sum as the board determines, his sureties to be approved by it, which bond shall be deposited with the president of the board within ten days after his appointment."

It will thus be seen that unless the three positions under discussion can come within the exemptions described in paragraph 7 of section 486-8 G. C., then they must come under the provisions of paragraph (b), section 486-8 G. C., which reads as follows:

"(b) (POSITIONS IN CLASSIFIED SERVICE.) The classified service shall comprise all persons in the employ of the \* \* \* city school districts \* \* \* not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

1. The competitive class shall include all positions and employments now existing or hereafter created in the \* \* \* city school district \* \* \* for which it is practicable to determine the merit and fitness of applicants by competitive examinations. \* \* \*"

The authority vested in the municipal civil service commission of a city as regards the city school district, of which the city is a part, occurs in section 486-19, which reads:

"The mayor or other chief appointing authority of each city in the state shall appoint three persons, one for a term of two years, one for four years, and one for six years, who shall constitute the municipal civil service commission of such city and of the city school district in which such city is located; \* \* \* Such municipal commission shall prescribe, amend and enforce rules not inconsistent with the provisions of this act for the classification of positions in the civil service of such city and city school district; for examinations and registrations therefor; and for appointments, promotions, removals, transfers, layoffs, suspensions, reductions and reinstatements therein; and for standardizing positions and maintaining efficiency therein. Said municipal commission shall have and exercise all other powers and perform all other duties with respect to the civil service of such \* \* \* city school district, as herein prescribed, and conferred upon the state civil service commission with respect to the civil service of the state; and all authority granted to the state commission with respect to the service under its jurisdiction shall, except as otherwise provided in this act, be held to grant the same authority to the municipal commission with respect to the service under its jurisdiction. \* \* \*"

Section 486-21 reads:

“(PAY ROLLS.) After the taking effect of this act it shall be unlawful for \* \* \* any fiscal officer of any \* \* \* city school district \* \* \* to draw, sign or issue or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of \* \* \* any \* \* \* city school district \* \* \* to pay any salary or compensation to any officer, clerk or employe or any other person in the classified service unless \* \* \* a payroll or account for such salary or compensation \* \* \* shall bear \* \* \* the certificate of the municipal service commission of such city, that the persons named in such \* \* \* payroll or account have been appointed, promoted, reduced, suspended or laid off or are being employed in pursuance of this act and the rules adopted thereunder.’

The civil service commission of the state, as well as the civil service commission of the municipalities of the state, have authority to make civil service rules in compliance with the civil service act, and the following language is important to notice, appearing in the civil service rules promulgated by the state civil service commission:

### RULE III.

#### Classification.

“Section 2. (TITLES.) Titles of all positions in the classified service shall be as nearly as possible descriptive of duties attached thereto, and indicative of the character thereof, and shall be the same for all offices and places requiring the same kind of service, regardless of location of employment. A change of title shall not operate to remove an officer or employe from the classification or grade of his position unless the duties of the position are changed.”

In conclusion it may be said that teachers' certificates are granted only to teachers on the presumed basis that they are teaching or belong to that profession, and certificates must be issued by examining boards in strict compliance with the statutes, and a person to be classed as a teacher on a payroll in a city school district must be engaged in teaching and not other activity which might be more secretarial or clerical than it was teaching.

Based upon the statement of facts furnished and the law herein quoted, it is therefore the opinion of the attorney-general that:

1. Under section 486-19 G. C. the municipal civil service commission in each city in the state is the civil service commission of the city school district in which such city is located, and such municipal civil service commission has authority to conduct examinations for all positions and employments under the board of education of such city school district unless the positions clearly come within the exemptions mentioned in section 486-8 General Code.

2. In city school districts all persons in the employ of the board of education of such city school district are in the classified civil service unless they are directors, superintendents, principals, instructors or teachers, as provided in paragraph 7 of section 486-8 of the General Code.

3. The director of the vocation bureau in a city school district is not the head of a principal department in such city school district and hence the person in charge of the vocation bureau is in the classified civil service and subject to examination

by the city civil service commission. The secretary of the placement office and the psychological laboratory assistants in the vocation bureau in a city school district are not "teachers connected with the public school system" (section 486-8 G. C.) and hence are in the classified civil service of the city school district in which they are employed and subject to examination by such civil service commission.

4. In any city school district of the state it is unlawful for the fiscal officer of such city school district to issue any warrant on the disbursing officer of such city school district to pay any salary or compensation to any employe in the classified service, unless such payroll has been approved by the municipal civil service commission of the city in which such city school district is located, as provided in section 486-21.

5. The directors connected with the public school system, mentioned in paragraph 7 of section 486-8 G. C., are the directors of schools in city school districts, as provided for in sections 7695, 7696, 7697 and 7698 G. C., and the statutes do not recognize any other kind of director in connection with the public school system of the state.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

946.

APPROVAL, ABSTRACTS, TRACTS 1 AND 2, LOTS 59 AND 60, WOOD BROWN PLACE, CLINTON TOWNSHIP, FRANKLIN COUNTY, OHIO, RECORDED IN PLAT BOOK 5, PAGE 196, RECORDER'S OFFICE, FRANKLIN COUNTY OHIO.

COLUMBUS, OHIO, January 15, 1920.

HON. CARL E. STEEB, *Secy. Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR—An examination has been made of two abstracts submitted by you, each of which was last continued January 12, 1920, by John K. Kennedy, attorney-at-law,<sup>12</sup> covering the title to the following described premises:

Tract No. 1—Situated in the township of Clinton, county of Franklin, and state of Ohio, and being Lot No. Fifty-Nine (59) of Wood Brown Place, as the same is numbered and delineated upon the recorded plat thereof, of record in plat book 5, page 196, recorder's office, Franklin county, Ohio.

Tract No. 2—Situated in the township of Clinton, county of Franklin and state of Ohio, and being Lot No. Sixty (60) of Wood Brown Place, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat book 5, page 196, recorder's office, Franklin county, Ohio.

It is my opinion that the abstract covering the title to the premises in tract No. 1, above described, shows a good and sufficient title to be in the name of Charles E. Coe on January 12, 1920, the date of the last continuation thereof, free from all incumbrances.

It is my further opinion that the abstract covering the title to the premises in tract No. 2, above described, shows a good and sufficient title to be in the name of Almon F. Coe, on January 12, 1920, the date of the last continuation thereof, free from all incumbrances.