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CIVIL SERVICE COMMISSION, STATE—CERTIFICATION OF PAYROLLS—IF DONE BY EMPLOYEE TO WHOM DUTY HAS BEEN DELEGATED, ALL REQUIREMENTS OF LAW MET—SECTION 486-21 G. C.

SYLLABUS:

The certification of payrolls by the State Civil Service Commission as required under Section 486-21, General Code, if done in the name of the State Civil Service Commission by an employee to whom the duty has been delegated meets all requirements of law.

Columbus, Ohio, February 8, 1945

Miss Gertrude Jones, Chairman
The State Civil Service Commission of Ohio
Columbus, Ohio

Dear Miss Jones :

I have your recent letter wherein you ask if the certification by the State Civil Service Commission required by Section 486-21, General Code, must be the certification of the Commission members themselves. The question arises by reason of the fact that objection has been made to the certifications made and signed by employees of the Commission rather than the members of the Commission itself. The certification has been made in the past by a stamp applied to a payroll bearing the name of the State Civil Service Commission and initialed or signed by the employee or employees of the Commission designated to the examination and certification of payrolls.

Section 486-21, General Code, provides for the certification of payrolls of classified employees of the State by the State Civil Service Commission. That section is in the following form :

“After the taking effect of this act it shall be unlawful for the auditor of state, or for any fiscal officer of any county, city or city school district thereof, to draw, sign or issue or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state, or of any county, city or city school district thereof, to pay any salary or compensation to any officer, clerk, employe, or other person in the classified service unless an estimate, payroll or account for such salary or compensation containing the name of each person to be paid, shall bear the certificate of the state civil service commission, or, in case of the service of a city, the certificate of the municipal service commission of such city, that the persons named in such estimate, 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.

Any sum paid contrary to the provisions of this section may be recovered from any officer or officers making such payment in contravention of the provisions of law and of the rules made in pursuance of law ; or from any officer signing or countersigning or authorizing the signing or countersigning of any warrant for the payment of the same, or from the sureties on his official

bond, in an action in the courts of the state, maintained by a citizen resident therein. All moneys recovered in any action brought under the provision of this section must, when collected, be paid into the treasury of the state or appropriate civil division thereof, except that the plaintiff in any action shall be entitled to recover his own taxable costs of such action."

As you will have noticed, the above section requires that before warrants may be drawn in payment of the salaries of classified employees the payroll calling for the issuance of the warrant must "bear the certificate of the State Civil Service Commission". There is no special requirement in the statute that the certification shall be the personal act of the members of the Commission. Throughout the sections governing the administration of the civil service laws it is provided that the Commission shall perform the various acts and duties imposed by these laws. Manifestly the individual members of the Commission cannot carry out and perform personally the many duties imposed by civil service laws, nor indeed would limitations of time permit the Commission members to examine and certify all payrolls submitted to it.

Under Section 486-5, General Code, the Commission is authorized to appoint a secretary and other employees. That section, in part, reads:

"* * * The commission may also appoint such examiners, inspectors, clerks and other assistants as may be necessary to carry out the provisions of this act * * *".

Obviously the above words were purposely used to allow the performance of the many acts required by law of the Civil Service Commission and to allow the delegation of various duties required of the Commission to employees appointed under that statute.

There is no rule of law which forbids a public officer to delegate administrative duties to assistant employees. The only positive prohibition in law against the delegation of duties by a public officer is that he may not delegate those duties of the office involving the discretion of the officer.

See 32 O. Jur. 946, 43 Am. Jur. 218.

The certification of payrolls involves no exercise of discretion. If the employees on the payroll concerned are appointed and are being employed pursuant to the civil service law, the certification of the payroll must

follow as a matter of course. The contrary is true if their appointment and employment are not pursuant to that law. There is no room for the exercise of discretion and the function is not non-delegable under law.

The principle involved here is obviously applicable to the many officers of the state. To illustrate, Section 243, General Code, requires of the Auditor of State :

“The auditor of state shall examine each voucher presented to him, or claim for salary of an officer or employe of the state, or per diem and transportation of the commands of the national guard, or sundry claim allowed and appropriated for by the general assembly, and if he finds it to be a valid claim against the state and legally due, and that there is money in the state treasury duly appropriated to pay it and that all requirements of law have been complied with, he shall issue thereon a warrant on the treasurer of state for the amount found due, and file and preserve the invoice in his office. He shall draw no warrant on the treasurer of state for any claim unless he finds it legal, and that there is money in the treasury which has been duly appropriated to pay it.”

It, of course, cannot be seriously contended that the Auditor personally must determine the legality of expense involved in every voucher presented for payment and personally draw and sign the warrant the voucher calls for. In the same manner it cannot seriously be asserted that those acts required of the State Civil Service Commission must be the personal acts of the members of the Commission.

A case very much in point is that of *State ex rel Stine vs Atkinson*, 138 O. S. 217, decided by the Supreme Court May 7, 1941. It was a mandamus action seeking the reinstatement of a civil service employee dismissed at the end of the probationary period. The letter of dismissal had been signed in the name of the Administrator of the Bureau of Unemployment Compensation by an employee of the Bureau occupying, as the court said, “a responsible position”. It was objected in the action that such was not the act of the Administrator, the appointing power, and therefore not sufficient in law. The contention of the relator was dismissed by the court with merely the statement that it was “too technical.”

I believe that case is sufficient authority to enable me to say here that the objection made to the certification of payrolls under Section 486-21, General Code, by employees of the Commission in the name of the Civil Service Commission is not well taken.

It is, therefore, my opinion that the certification of payrolls by the State Civil Service Commission as required under Section 486-21, General Code, if done in the name of the State Civil Service Commission by an employee to whom the duty has been delegated meets all requirements of law.

Respectfully,

HUGH S. JENKINS
Attorney General