

2764

AUTHORIZATION OF "PARDON AND PAROLE COMMISSION" TO APPOINT ITS CLERKS, SECRETARIES, STENOGRAPHERS AND PROBATION AND PAROLE OFFICERS, SUPERVISORS AND OTHER PERSONNEL—COUNTY PROBATION DEPARTMENT NOT ENTITLED TO COMPENSATION FROM STATE FOR PAROLEE SUPERVISION UNLESS A SPECIFIC AGREEMENT IS MADE—§§2301.38, 2301.32, 2965.08, 143.08, 2965.20 R.C.

## SYLLABUS:

1. A county probation department is not entitled to compensation from the state for the parolee supervision required by Section 2301.28, Revised Code, however, compensation may be paid by the state to a county probation department under an agreement entered into pursuant to the provisions of Section 2301.32, Revised Code, and providing for the supervision of all prisoners in such county on parole from state penal and reformatory institutions.

2. In view of the provision in Section 2965.08, Revised Code, stating that the "pardon and parole commission is a principal appointing authority", such commission is authorized by Section 143.08, Revised Code, to appoint two secretaries, assistants, or clerks and one personal stenographer, in the unclassified civil service of the state.

3. In addition to the right to appoint two secretaries, assistants, or clerks and one personal stenographer in the unclassified service of the state, the pardon and parole commission may appoint within the classified service such assistants, supervisors, social investigators, clerks, stenographers, and such other personnel as is necessary to enable the commission properly and efficiently to perform its duties; and the commission, pursuant to Section 2965.20, Revised Code, has the duty to appoint a superintendent of probation and parole within the classified service.

4. The superintendent of probation and parole is authorized to employ within the merit system, such probation and parole officers, assistants, and clerical staff as may be necessary to carry out the responsibilities of the bureau, and the pardon and parole commission is not authorized to make such appointments.

Columbus, Ohio, January 18, 1962

Hon. Joseph E. Doneghy, Chairman  
Ohio Pardon & Parole Commission  
1 South Fourth Street, Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion, in which you ask the following questions:

“Is a county accepting parole supervision under Sec. 2301.28 entitled to any compensation from the state, or is compensation to be made only where there is an agreement under Sec. 2301.32 for the supervision of *all* parolees?”

“Referring to the fourth paragraph of Section 2965.08, Revised Code, what is the significance of the word ‘principal’ as modifying ‘appointing authority’?”

“In view of the fact that the pardon and parole commission is designated as ‘principal appointing authority’, and that the bureau of probation and parole is created within the pardon and parole commission by Sec. 2065.20 (A) as amended, what is the significance of the word ‘employ’ and where does the responsibility and authority of the superintendent of the bureau end and that of the Commission begin, in the appointment, disciplining and removal of employees of this bureau?”

Section 2301.27, Revised Code, says that the court of common pleas may establish a county department of probation and supervise the work of its appointees. Provision is also made for the judges of two or more counties joining in the establishment of a probation department for such counties, in which event “The cost of the administration and operation of said department shall be pro rated to the respective counties on the basis of population.” It is further provided:

\* \* \*

\* \* \*

\* \* \*

“Probation officers shall, in addition to their respective salaries, receive their necessary and reasonable traveling and other expenses incurred in the performance of their duties. Such salaries and expenses shall be paid monthly from the county treasury in the manner provided for the payment of the compensation of other appointees of the court.”

Section 2301.28, Revised Code, provides:

“The court of common pleas of a county in which a county department of probation has been established under section 2301.27 of the Revised Code, in addition to employing such department in investigation and in the administration of its own orders of probation shall receive into the legal control and supervision of said department any person resident within the county who has been placed upon probation by order of any other court exercising criminal jurisdiction in this state, whether within or without such county, upon the request of such court and subject to the continuing jurisdiction thereof. Said court of common pleas shall also receive into the legal custody or supervision of said department any person paroled or conditionally pardoned from a penal, re-

formatory, or correctional institution and residing or remaining in the county if requested by the pardon and parole commission, or other authority having power to parole from any such institution.”

As you have noted, there is no mention in this section of compensation to the county by the state for such service.

Section 2301.32, Revised Code, provides:

“In any county wherein a county department of probation has been established as provided by section 2301.27 of the Revised Code and complies with standards and conditions prescribed by the pardon and parole commission, an agreement may be entered into between the court of common pleas and the pardon and parole commission under which the county department of probation shall supervise all prisoners in such county on parole from state penal and reformatory institutions as provided in sections 2301.28 to 2301.31, inclusive of the Revised Code and in consideration thereof the state shall pay to the county from time to time such amounts as are provided for in such agreement.

“In any county wherein a county department of probation has not been established as provided by section 2301.27 of the Revised Code, an agreement may be entered into between the court and the pardon and parole commission acting through its bureau of probation and parole under which such court may place defendants on probation in charge of the bureau of probation and parole and in consideration thereof such county shall pay to the state from time to time such amounts as are provided in such agreement.”

From the foregoing, it appears that unless an agreement has been reached between the pardon and parole commission and the court of common pleas of a county in which a county department of probation has been established in which agreement provision is made for periodic payments from the state to the county for such service there is no provision for parole supervision services compensation. The inclusion of the provision for compensation in Section 2301.32, Revised Code, shows that the legislature had thoughts of compensation in mind during its consideration of Amended Senate Bill No. 468, which amended Section 2301.28 and 2301.32, *supra*, effective October 18, 1961. The omission of any provision for compensation in Section 2301.28, Revised Code, which is a part of the same act, must therefore be regarded as deliberate, thereby showing that no compensation was intended in the absence of a formal agreement therefor. Possibly it was assumed that the commission would ordinarily use its own parole and field

officers, as authorized in Section 2965.20, Revised Code. This would account for the provision in Section 2301.28, Revised Code, that the county department of probation shall supervise "any person" on parole *when requested by the commission*; whereas, if an agreement is made, the county department of probation "shall supervise all prisoners."

Coming to the second and third questions:

The present five member pardon and parole commission was established under authority of Section 2965.02, Revised Code, which in its present form became effective October 1, 1959.

Section 2965.08, Revised Code, empowers the commission to appoint "an executive secretary, who shall be in the unclassified civil service, to serve during the pleasure of such commission." After setting forth the qualifications and duties of the executive secretary, this section then provides:

\* \* \*

\* \* \*

\* \* \*

"The pardon and parole commission is a principal appointing authority within the meaning of sections 143.01 to 143.48, inclusive, of the Revised Code. The commission shall appoint such assistants, supervisors, social investigators, clerks, stenographers, and such other personnel as are necessary to enable such commission properly and efficiently to perform its duties. All officers and employees appointed by the commission shall be appointed from lists certified to the pardon and parole commission by the department of state personnel and shall be in the classified civil service.

"The pardon and parole commission is a part of the department of mental hygiene and correction for administrative purposes only."

Sections 143.01 through 143.48, Revised Code, deal with civil service. Section 143.01, Revised Code, defines certain terms as used in the civil service law. In paragraph (D) thereof it is said:

"(D) 'Appointing authority' signifies the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution."

The pardon and parole commission, having been given the power to appoint and remove employees, must look to Section 143.03, Revised Code, for the method of making appointments and removals. This section reads:

"No person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employee in the civil service, in any manner or by any means other than those prescribed in Sections 143.01 to 143.48, inclusive, of the Revised Code, and the rules of the director of state personnel or the municipal civil service commission within their respective jurisdictions."

As "a principal appointing authority," the pardon and parole commission has authority to make appointments both in the classified and in the unclassified service. Authority therefor is found in Section 143.08, Revised Code, the pertinent portions of which are as follows:

"The civil service of the state \* \* \* shall be divided into the unclassified service and the classified service.

"(A) 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 by Sections 143.01 to 143.48, inclusive, of the Revised Code:

\* \* \* \* \*

"(3) The members of all boards and commissions, and heads of principal departments, boards and commissions appointed by the governor or by and with his consent; \* \* \*;

\* \* \* \* \*

"(8) Three secretaries, assistants, or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants, or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards, or commissions, except civil service commissions, authorized to appoint such secretary, assistant, or clerk and stenographer;

\* \* \* \* \*

"(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts and city school districts thereof, 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 in the state and the counties, cities, city health districts, and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by the promotion, reinstatement, transfer, or reduction, as

provided in sections 143.01 to 143.48, inclusive, of the Revised Code, and the rules of the director of state personnel, by appointment from those certified to the appointing officer in accordance with such sections.”

“\* \* \*

\* \* \*

\* \* \*”

Since the pardon and parole commission is “a principal appointing authority,” it has the right to appoint two secretaries, assistants, or clerks and one personal stenographer in the unclassified service. All other employees must be in the classified civil service of the state. The employees which the pardon and parole commission may appoint within the classified service are those mentioned in Section 2965.08, Revised Code, wherein it is said:

“The commission shall appoint such assistants, supervisors, social investigators, clerks, stenographers, and such other personnel as is necessary to enable such commission properly and efficiently to perform its duties.”

Nothing is said respecting the appointment of officers and employees of the bureau of probation and parole. The appointing authority is confined to personnel necessary to enable the commission properly and efficiently to perform *its* duties.

The present bureau of probation and parole was created within the pardon and parole commission by the enactment of the present Section 2965.20, Revised Code, which became effective October 18, 1961. This section states that the bureau shall be under the direction and supervision of a superintendent of probation and parole “who shall be appointed by the pardon and parole commission and who shall be within the classified civil service.” After setting forth some of the operational duties of the superintendent, it is then specifically provided:

“The superintendent shall employ within the merit system, such probation and parole officers, assistants, and clerical staff as may be necessary to carry out the responsibilities of the bureau. The superintendent shall, with the approval of the commission, establish district offices and shall assign necessary probation and parole officers and clerical staff to such district offices.”

I am of the opinion that this specific grant of authority to the superintendent takes precedence over the appointing powers of the commission as to the appointment of personnel of the bureau of probation and parole.

From a consideration of the foregoing statutory provisions I am of the opinion and you are advised:

1. A county probation department is not entitled to compensation from the state for the parolee supervision required by Section 2301.28, Revised Code, however, compensation may be paid by the state to a county probation department under an agreement entered into pursuant to the provisions of Section 2301.32, Revised Code, and providing for the supervision of all prisoners in such county on parole from state penal and reformatory institutions.

2. In view of the provision in Section 2965.08, Revised Code, stating that the "pardon and parole commission is a principal appointing authority", such commission is authorized by Section 143.08, Revised Code, to appoint two secretaries, assistants, or clerks and one personal stenographer, in the unclassified civil service of the state.

3. In addition to the right to appoint two secretaries, assistants, or clerks and one personal stenographer in the unclassified service of the state, the pardon and parole commission may appoint within the classified service such assistants, supervisors, social investigators, clerks, stenographers, and such other personnel as is necessary to enable the commission properly and efficiently to perform its duties; and the commission, pursuant to Section 2965.20, Revised Code, has the duty to appoint a superintendent of probation and parole within the classified service.

4. The superintendent of probation and parole is authorized to employ within the merit system, such probation and parole officers, assistants, and clerical staff as may be necessary to carry out the responsibilities of the bureau, and the pardon and parole commission is not authorized to make such appointments.

Respectfully,  
MARK McELROY  
Attorney General