

of Turkey Creek; thence up the Creek with the meanders thereof 1200 ft. to a beech on top of a cliff on the S. side of Turkey Creek; thence S. 50½ W. 100 ft. to a stone; thence S. 48° E. 626 ft. to a stone, corner to Survey No. 13457, to a maple and gum trees all gone; thence with line of same S. 40° E. 75 poles to the place of beginning, containing 15 acres, 13 being in Survey 13457 and 2 acres in Survey 15443, being the same premises conveyed to Charles E. Shiveley by William Shiveley, Sr. and Nancy E. Shiveley, his wife by deed dated January 29, 1912 and recorded in Vol. 100, page 533, record of deeds of Scioto County, Ohio."

An examination of the abstract shows that at the time of his death, January 8, 1927, one John May owned a merchantable fee simple title to the above described lands, subject to the dower interest of his wife, Parma May, and subject to a certain mortgage originally in the sum of \$1100.00 executed by said John May and wife, to one Edward Cunningham, and subject to certain general indebtedness of his said estate. The proceedings had in the Probate Court on the petition of Parma May as administratrix of the estate of John May for the sale of the above described lands for the purpose of paying the debts of said estate is in all respects regular. The judgment entry of the Probate Court concerning the sale of said premises to the State of Ohio orders the cancellation of the mortgage of said Cunningham. Upon the payment of the purchase price of these lands you should see to it that cancellation is entered of record with respect to said mortgage of said John May and wife to Edward Cunningham, which you will find recorded in Mortgage Records 107, page 167, recorder's office, Scioto County, Ohio. You should also see that the regular and delinquent taxes against said lands amounting to \$35.01 are paid.

I have examined the corrected deed signed by Parma May, as executrix of the estate of John May, deceased, and find the same to be in all respects regular and legally sufficient to convey to the State of Ohio said lands and premises.

I am herewith returning with said abstract, the deed of said administratrix, encumbrance estimate, record of proceedings in the Probate Court with respect to the sale of said lands, and other files submitted to me touching the investigation of the title to these lands.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1709.

SUPERINTENDENT OF COUNTY HOME—POSITION MAY BE CLASSIFIED BY STATE CIVIL SERVICE COMMISSION—INCUMBENT HOLDING PROVISIONAL APPOINTMENT BY COUNTY COMMISSIONERS NO BAR TO CLASSIFICATION.

SYLLABUS:

It cannot be said as a matter of law that the position of superintendent of a county home of a county is one calling for such peculiar and exceptional qualifications of a scientific, managerial, professional or educational character as to make impracticable the filling of said position by competitive examination; and where the State Civil Service Commission has classified said position as one in the classified

service, to be filled upon competitive examination, such Commission may require a permanent appointment to such position to be made from an eligible list after competitive examination therefor, although said position may have been held for several years by provisional appointment made by the board of county commissioners of the county.

COLUMBUS, OHIO, February 13, 1928.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication which reads as follows:

“Three years ago the County Commissioners appointed a superintendent for the County Home as provided by Section 2523 of the General Code of Ohio, there having been a vacancy created due to resignation of previous superintendent and said newly appointed superintendent has served in that capacity during the past three years without ever having been required to take a civil service examination.

A few days ago he was notified, as was the County Commissioners of this county, that he, the said superintendent, would be required to take a civil service examination, said notice having been sent by the Civil Service Commission of Ohio.

Under Section 486-14, General Code, paragraph 2, it is provided that where peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable and that the position can best be filled by a selection of some designated person, etc., the commission may suspend the provisions of the Statute requiring competition in such case, etc.

There having been no examination required of said superintendent at the time of his appointment and the Commission having never suspended the examination and said superintendent having served three years in that capacity, can the Commission now require an examination for said appointive position?”

The question presented in your communication is one concerning the application of the Civil Service Laws of this state to the position of Superintendent of a County Home.

Section 2523, General Code, provides that the county commissioners shall appoint a superintendent who shall reside in some apartment of the infirmary or other buildings contiguous thereto, and shall receive such compensation for his services as such commissioners may determine; and that said superintendent shall perform such duties as the commissioners impose upon him, and that he shall be governed in all respects by their rules and regulations.

The county home is, of course, a county institution, and quite clearly the superintendent of such county home is a county employe. *Palmer vs. Ziegler*, 76 O. S. 210.

The civil service legislation of this state, which has been carried into the General Code as Sections 486-1a to 486-31, inclusive, of the General Code, has been enacted pursuant to the provisions of Section 10 of Article XV of the Constitution of Ohio, which reads as follows:

"Appointments and promotions in the civil service of the state, the several counties and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

Section 486-1a, General Code, provides in part as follows:

"1. The term 'civil service' includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.

2. The 'state service' shall include all such offices and positions in the service of the state, or the counties thereof, except the cities and city school districts.

3. The term 'classified service' signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof."

Section 486-8, General Code, provides that "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."

This section enumerates certain positions which shall not be included in the classified service, and, after making such enumeration in the unclassified service, provides further as follows:

"The classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class. The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities 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 promotion, reinstatement, transfer or reduction, as provided in this act, and the rules of the commission, by appointment from those certified to the appointing officer in accordance with the provisions of this act."

I have not quoted at length the provisions of Section 486-8, General Code, enumerating the positions in the unclassified service. It is sufficient to say that the position of superintendent of the county home is not one of the positions so enumerated.

It follows, therefore, that the position of superintendent of a county home is in the classified service, and, inasmuch as said position is not in the unskilled labor class, it falls within the competitive class of the classified service provided for by Section 486-8, General Code.

The second paragraph of Section 486-14, General Code, referred to in your communication, reads as follows:

"In case of a vacancy in a position in the classified service where peculiar and exceptional qualifications of a scientific, managerial, pro-

fessional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable and that the position can best be filled by a selection of some designated person of high and recognized attainments in such qualities, the commission may suspend the provisions of the statute requiring competition in such case, but no suspension shall be general in its application to such place, and all such cases of suspension shall be reported in the annual report of the commission with the reasons for the same."

Section 486-9, General Code, so far as pertinent, provides:

"As soon as practicable after the taking effect of this act (G. C., sections 486-1 to 486-31), the commission shall put into effect rules for the classification of offices, positions and employments, in the civil service of the state and the several counties thereof; for appointment, promotions, transfers, layoffs, suspensions, reductions, reinstatements and removals therein and examinations and registrations thereof; * * *

This department, in an opinion addressed to the State Civil Service Commission under date of January 20, 1916, Opinions of the Attorney General, 1916, Vol. 1, page 97, upon consideration of the above noted provisions of the General Code, held:

"The State Civil Service Commission, under authority of Section 486-9, G. C., as amended 106 O. L. 406, and related sections, may classify the persons remaining in the employ of the state, the several counties, cities and city school districts thereof, who have not been included in the unclassified service or unskilled labor class or any class other than the competitive class, upon the ground of practicability of competitive examinations to test their merit and fitness for the position for which they are applicants. When such classification is made those persons whose merit and fitness for a position it is decided practicable to determine by competitive examination may be included in the competitive class, while those persons whose merit and fitness for the position to be filled are found by said commission to be impracticable to determine by competitive examinations may be exempted from said competitive class, and when so exempted are removed from the operation of the civil service law, and are not within any class named therein."

Sometime before this, in an opinion addressed to the State Civil Service Commission under date of January 29, 1915, Opinions of the Attorney General for 1915, Vol. 1, page 59, this department had under consideration the application of the above noted provisions of the General Code relating to the civil service of the state and the several counties to the position of superintendent of a county children's home. In this opinion it was held that the question whether it is practicable to determine the merit and fitness of a superintendent of a county children's home by competitive examination was one for the determination of the Commission. In this opinion it is said that inasmuch as the position of superintendent of a county children's home was not in the unclassified civil service, it was by the express provisions of said act included in the competitive class of the classified service; and that being in the competitive class, as defined by the statute, incumbents in said position should be appointed after competitive examination, unless it be determined that it is not practicable to determine the merit and fitness

of applicants for the position by competitive examination, or unless, as provided for in section 14 of the act (486-14 G. C.), the position calls for peculiar and exceptional qualifications of a scientific, managerial, professional or educational character, such as would, as a matter of law, make competition for the position impracticable. In this opinion it was further said that whether or not within the purview of the provisions of Sections 8 and 14 of the civil service act (Secs. 486-8 and 486-14, G. C.) it is practicable to determine the merit and fitness of applicants for the position of superintendent of the children's home, is a question to be determined by the state civil service commission; and that on a consideration of the provisions of said civil service act it could not be said, as a matter of law, that the merit and fitness of applicants for said position cannot be determined by competitive examination.

What has been said by this department in the opinion just referred to with respect to the position of superintendent of a county children's home has equal application to the position of the superintendent of the county home of a county; and said opinion, together with the other opinion of this department above referred to, is, in my opinion, conclusive with respect to the question submitted by you; and that inasmuch as the State Civil Service Commission has apparently found and determined that the merit and fitness of an applicant for the position of superintendent of the county home of this and other counties of the state can be determined by competitive examination under the rules and regulations prescribed by said Commission, the present superintendent of the county home of the county referred to is not exempted from the examination which the State Civil Service Commission proposes to make with respect to said position, notwithstanding the fact that he has apparently been holding said position by provisional appointment for a number of years. Section 486-14, General Code, provides for provisional appointments in the classified service in certain contingencies therein mentioned, but as to such provisional appointment it is provided that the same "shall continue in force only until regular appointment can be made by eligible lists prepared by the commission." This section of the General Code provides that such eligible lists shall be prepared within ninety days after such provisional appointment is made. However, this provision as to time is clearly directory and there is no legal objection to the commission preparing such eligible lists at this time from which the permanent appointment to this position is to be made.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1716.

APPROVAL, BONDS OF WREN SCHOOL DISTRICT, VAN WERT
COUNTY—\$95,000.00.

COLUMBUS, OHIO, February 14, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.