

98

1. CIVIL SERVICE COMMISSION, STATE, MEMBERS OF—
INCUR NO RISK OF PERSONAL LIABILITY BY REASON
OF CERTIFICATION OF PAYROLL OF CLASSIFIED EM-
PLOYES, IN SO FAR AS SERVICE RECORDS ARE IN-
VOLVED—SECTION 486-21 G. C.—AMENDED SENATE
BILL NO. 1, 96th GENERAL ASSEMBLY.
2. COMMISSION HAS NO AUTHORITY TO CERTIFY PAY-
ROLLS OF UNCLASSIFIED EMPLOYES IN CIVIL SERV-
ICE OF STATE UNDER SECTION 486-21 G. C.

SYLLABUS:

1. Members of the State Civil Commission incur no risk of personal liability by reason of the Commission's certification under Section 486-21, General Code, of the payroll of classified employees in so far as service records are involved under Amended Senate Bill No. 1 of the 96th General Assembly.

2. The State Civil Service Commission has no authority to certify under Section 486-21, General Code, payrolls of unclassified employees in the civil service of the state.

Columbus, Ohio, January 31, 1945

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

Dear Miss Jones:

This will acknowledge your letter dated January 20, 1945, which is as follows:

"The State Civil Service Commission respectfully requests an official opinion upon the following questions:

1. Do the members of the State Civil Service Commission, who serve without bond, assume any personal financial liability in certifying the payrolls of persons in the State service?
2. Has this Commission the authority to certify the payrolls of unclassified employees whose service records are not part of the records of this office?

3. In certifying the payrolls in accordance with the provisions of Senate Bill No. 1, passed by the 96th General Assembly, would it be proper for this Commission to accept the word of any Department of State in regard to the service records of unclassified employees serving in such departments?"

The answer to both your first and second questions is dependent upon Section 486-21, General Code. That section provides for the certification of payrolls by the State Civil Service Commission and is as follows:

"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 provisions 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."

(Emphasis mine.)

You will note from a reading of the entire section, with special attention directed to the above emphasized words, that the certification by the Commission is only that the persons on the payroll have been appointed, promoted, reduced, suspended or laid off or are being employed in pursuance of the civil service law and rules adopted under the authority of that law.

In an opinion of the Attorney General dated May 1, 1940, and found in 1940 O. A. G., Volume 1, Page 413, attention was drawn to the narrow purpose and scope of certification of payrolls by the Commission. The question in that opinion was whether the Civil Service Commission could refuse to certify a payroll bearing the name of a classified employee, who, it was considered, was doing acts in violation of the civil service law which would subject that employee to dismissal. In that opinion a New York case was cited, the People ex rel Doyle vs Knox, 73 N.Y.S. 650, wherein at Page 652 the following statement is found :

“All the Civil Service Commissioners have to ascertain before certifying the payroll is whether or not the persons named therein have been appointed, or employed or promoted in pursuance of law”.

Since the Ohio civil service laws are an adoption of the New York law on the same subject, the above New York case may be considered as an authority. See 7 O. Jur. 510.

It is difficult to see in what manner the members of the Commission would subject themselves to personal financial liability in certifying a payroll in the absence of some wilful wrongful act or an extreme negligence resulting in damage to some person injured thereby. The Commissioners are not the auditors of payrolls presented for certification and do not pass by their certification upon the correctness of payroll figures, but only as noted above upon the propriety of the appointment and present employment of persons appearing thereon under the civil service act.

I assume from the form of your questions, and particularly from the nature of the third question, that the problem foremost in the mind of the Commission is the accuracy and propriety of figures on payrolls submitted relating to prior service credit and enhanced pay received thereby under Amended Senate Bill 1 of the present General Assembly.

Because the Civil Service Commission is limited to certifying that persons on a payroll are appointed and employed in conformity with civil service law, the Commission has no duty or right to be concerned with service records of state employees for the purposes of said Amended Senate Bill No. 1. It follows that no liability in regard thereto could result from the Commission's certifying of payrolls.

As noted above, the answer to your second question is also found in Section 436-21, General Code. That section provides only that no warrant for the salary of an employee in the *classified service* shall be drawn unless it be certified to by the Commission that such person was appointed and is being employed in pursuance of civil service law and regulations. The Civil Service Commission is a creature of statute, having only such powers as are given by statute. The statute here makes no provision for certification of payrolls of employees in the unclassified service. It is, therefore, not the duty of the Civil Service Commission or has it the right to certify payrolls as to unclassified employees.

This view is confirmed by the provisions of Section 486-7, General Code, which provides that the Commission shall keep a roster of "all persons in the classified service". In the absence of a roster or record of unclassified employees or the authority to create one the law puts the Commission in no position to certify that such employees are appointed or presently employed in pursuance of the civil service act. In fact, such certification would be an inconsistency in that unclassified employees are not in fact appointed or employed in pursuance of the civil service laws of Ohio.

Inasmuch as I have already determined that the Civil Service Commission is not concerned with the service records of classified employees for the purposes of Amended Senate Bill 1, your third question need not be considered.

In view of the above discussion, you are advised that, in my opinion, the members of the State Civil Service Commission incur no risk of personal liability by reason of the Commission's certification under Section 486-21, General Code, of the payroll of classified employees in so far as service records are involved under Amended Senate Bill No. 1 of the 96th General Assembly. The Commission's certification does not import verity to service records appearing thereon. The State Civil Service Commission has no authority to certify under Section 486-21, General Code, payrolls of unclassified employees in the civil service of the state.

Respectfully,

HUGH S. JENKINS
Attorney General