

I am of the opinion that the payment of the claims for traveling expense as recited in your inquiry was illegal.

Respectfully,
C. C. CRABBE,
Attorney General.

2314.

CLASSIFIED SERVICE—SCHOOL JANITOR IS NOT EXEMPTED UNDER PROVISIONS OF SECTION 486-8 G. C.

SYLLABUS:

A school janitor may not be exempted from the classified service under the provisions of paragraph 12 of section 468-8 of the General Code.

COLUMBUS, OHIO, March 24, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgement is made of your communication inquiring whether a municipal civil service commission may legally exempt the position of school janitor from the classified service, and provide for the appointment without competitive examination, under the provisions of paragraph 12 of section 486-8.

The section to which you refer, in so far as your question is concerned, provides that "such unskilled labor positions as the state commission or any municipal commission may find it impracticable to include in the competitive classified service" shall be in the unclassified service. However, that section provides that such exemptions shall be by order of the commission, duly entered on the records of the commission with the reasons for such exemption.

It would seem that in the first instance, whether or not such a position is an unskilled labor position, would be a question of fact to be determined by the commission. However, it has been brought to my attention that it has been the policy of the state civil service commission to consistently hold that a school janitor is within the classified service, and cannot be exempted under this provision.

You are further referred to the case of *State ex rel. Bartholomew vs. Witt, Treas.*, 3 Ohio App. Reps., 414, wherein the status of a janitor employed by the board of education of Cincinnati was considered. The court held, as evidenced by the second branch of the syllabus, that:

"Such janitor of a public school building is within the classified service, but those who were legal incumbents of the position at the time of the passage of the civil service act are entitled to hold over, subject to a noncompetitive examination."

In the body of the opinion it was clearly pointed out that such a position did not fall within the exceptions of the section to which you refer.

In view of the foregoing you are specifically advised that a school janitor may not be exempted from the classified service under the provisions of paragraph 12 of section 486-8 of the General Code.

Respectfully,
C. C. CRABBE,
Attorney General.