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JUVENILE RESEARCH, CHIEF OF DIVISION—POSITION CREATED BY DIRECTOR OF PUBLIC WELFARE—SECTION 154-8 G. C.—NOT EXEMPTED UNDER SECTION 486-8, PARAGRAPH a, SUBSECTION 8 G. C.—WITHIN CLASSIFIED CIVIL SERVICE.

SYLLABUS:

The position of Chief of the Division of Juvenile Research created under Section 154-8, General Code, by the Director of Public Welfare within the Department of Public Welfare, not having been exempted under Section 486-8, paragraph (a), subsection 8, General Code, is within the classified civil service.

Columbus, Ohio, June 2, 1949

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

Dear Miss Jones:

Your request for my opinion is as follows:

“Under the provisions of Section 154-8 of the General Code, the Director of the Department of Public Welfare has, with the approval of the Governor, created a new division in the Department of Public Welfare, to be known as the Division of Juvenile Research, Classification and Training, in accordance with the attached copy of the order establishing the division.

“We are also in receipt of a request from the Director of Public Welfare for the approval of the promotion of Mr. John R. Ferguson, who now occupies the position of Administrative Assistant, Children’s Service, Division of Social Administration, in the classified service, to the position of Chief of the newly established Division of Juvenile Research, Classification and Training. We are also attaching a copy of the request of the Director.

“In view of the provisions of Section 154-19, General Code, which expressly states that ‘all offices created by Section 154-5 and Section 154-6 of the General Code, shall be in the unclassified service of the state’, we desire to respectfully request your opinion as to whether the promotion of a classified employee to the position of Chief of the Division of Juvenile Research, Classification and Training created in accordance with the provisions

of Section 154-8, General Code, can be approved and the employee thereafter retain his classified status while serving in the position of Chief of the Division.”

The first question to be answered is whether the office of Chief of the Division of Juvenile Research is a position within the classified or unclassified service. This Division is created under the authority vested in the Department of Public Welfare under Section 154-8 of the General Code, which reads in part as follows:

“The officers mentioned in sections 154-5 and 154-6 of the General Code shall be under the direction, supervision and control of the directors of their respective departments, and shall perform such duties as such directors shall prescribe.

“With the approval of the governor, the director of each department shall establish divisions within his department, and distribute the work of the department among such divisions. Each officer created by section 154-6 of the General Code shall be the head of such a division. \* \* \*”

Section 154-19 of the General Code, is a special provision of the civil service laws, which relates to positions created by the Administrative Code. This section reads as follows:

“Each department is empowered to employ, subject to the civil service laws in force at the time employment is made, the necessary employes, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation. Nothing in this chapter shall be construed to amend, modify or repeal the civil service laws of the state, except as herein expressly provided.

*“All offices created by sections 154-5 and 154-6 of the General Code shall be in the unclassified civil service of the state.”*  
(Emphasis added.)

Thus, it may be seen that if the position of Chief of the Division of Juvenile Research comes within the emphasized portion of Section 154-19 it is a position within the unclassified civil service and this will depend upon whether the position was created by Section 154-5 General Code, or Section 154-6 General Code. Section 154-5 reads as follows:

“In each department there shall be *an* assistant director, who shall be designated by the director to fill one of the offices within such department, enumerated in section 154-6 of the General Code, or *as the head of one of the divisions created within such*

department as authorized by section 154-8 of the General Code. When a vacancy occurs in the office of director of any department, the assistant director thereof shall act as director of the department until such vacancy is filled." (Emphasis added.)

Section 154-6 reads in part as follows:

"Offices are created within the several departments as follows: \* \* \*

In the department of public welfare:

Fiscal supervisor  
Superintendent of charities. \* \* \*"

The offices created by Section 154-6 are Fiscal Supervisor and Superintendent of Charities. The office created by Section 154-5 is that of Assistant Director, who shall be either Fiscal Supervisor, Superintendent of Charities or head of one of the divisions created within the Department of Public Works as authorized by Section 154-8 General Code. Thus it may be seen that Sections 154-5 and 154-6 create only three offices, which are as follows: (1) Assistant Director, (2) Fiscal Supervisor (3) Superintendent of Charities.

Therefore, the position of Chief of the Division of Juvenile Research is not an office created under Sections 154-5 and 154-6 and, therefore, as to that position the provisions of Section 154-19 do not apply. See *State ex rel. Myers v. Blake*, 121 O. S. 511, at page 515, containing a discussion of Sections 154-5 and 154-6.

Since Section 154-19, General Code, does not apply, reference must be had to the Civil Service Laws to determine whether the position of Chief of the Division of Juvenile Research is in the classified or the unclassified service.

The classified service is defined in Section 486-1 General Code, as follows:

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

Also, in Section 486-8 General Code, paragraph (b), the classified service is defined, viz:

"(b) 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." (Emphasis added.)

The unclassified service is defined in paragraph (a) of Section 486-8. That paragraph reads as follows

"(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 in this act:

"1. All officers elected by popular vote or persons appointed to fill vacancies in such offices.

"2. All election officers and the employes and clerks of persons appointed by boards of deputy supervisors and inspectors of elections.

"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; and the members of all boards and commissions and all heads of departments appointed by the mayor, or if there be no mayor such other similar chief appointing authority of any city or city school district. Provided, however, that nothing contained in this act shall exempt the chiefs of police departments and chiefs of fire departments of municipalities from the competitive classified service as provided in this act.

"4. The members of county or district licensing boards or commissions, and boards of revision and assistant assessors.

"5. All officers and employes elected or appointed by either or both branches of the general assembly, and such employes of the city council as are engaged in legislative duties.

"6. All commissioned, non-commissioned officers and enlisted men in the military service of the state including military appointees in the office of the adjutant general.

"7. All presidents, business manager, administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers and such employes as are engaged in educational or research duties connected with the public school system, colleges and universities; and the library staff of any library in the state supported wholly or in part at public expense.

"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 administrative*

*executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.*

"9. The deputies of elective or principal executive officers authorized by law to act for and in the place of their principals and holding a fiduciary relation to such principals.

"10. Bailiffs, constables, official stenographers and commissioners of courts of record, and such officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination.

"11. Assistants to the attorney-general, special counsel appointed or employed by the attorney-general, assistants to county prosecuting attorneys and assistants to city solicitors.

"12. Such teachers and employes in the agricultural experiment stations; such teachers in the benevolent, penal or reformatory institutions of the state; such student employes in normal schools, colleges and universities of the state; and such unskilled labor positions as the state commission or any municipal commission may find it impracticable to include in the competitive unclassified service; provided, that such exemptions shall be by order of the commission, duly entered on the record of the commission with the reasons for each such exemption."

(Emphasis added.)

It may be seen that the position of Chief of the Division of Juvenile Research is not specifically included in the unclassified service unless he comes within the purview of paragraph (a), subsection 8 as an assistant of an appointive executive officer. The word "assistant" as used in subsection 8 denotes an assistant to the head of the department, as an agent through whom the duties and purposes of the department are accomplished. See *State ex rel. Neffner v. Hummel*, 142 O. S. 324, at page 334.

I do not believe that the Chief of the Division of Juvenile Research is such an assistant, since I am assuming that this position has not been exempted under Rule 3, paragraph 2 of the Civil Service Commission, by the principal appointive executive officer. Unless such exemption from the competitive classified service is claimed under paragraph (a), subsection 8 of Section 486-8 General Code, within thirty days after the principal appointive officer takes office, there may be no change in the designation of exemption. I assume that this has not been done by the Director of Public Welfare and therefore the position of Chief of

the Division of Juvenile Research must be considered to be in the classified service.

Therefore, since such position is within the classified service, answers to your other questions are not necessary.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.