

750.

CIVIL SERVICE—SURVEY AND RECLASSIFICATION OF POSITION—
INCREASE IN SALARY.

SYLLABUS:

An employe within the classified service of the State, who is by virtue of the provisions of Section 2255 of the General Code and Section 9 of the Appropriation Act (H. B. No. 502), receiving a greater salary than that provided for the position in the classification adopted by the legislature, may receive an increased salary if, upon a survey of said position, it is found that the duties of the position are within a classification for which a greater compensation than he is now receiving is provided by law.

COLUMBUS, OHIO, July 19, 1927.

The State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

“Section 9 of the new Appropriation Bill (H. B. No. 502), provides that the appropriation for personal service of employes in certain groups and grades may be expended only in accordance with the classification and rules of the State Civil Service Commission and in accordance with the salary schedule specified therein, provided, however, that ‘rates of compensation of persons now employed in the foregoing groups and grades of the classified civil service of the state, which on the date of the passage of this act may exceed the uniform rate fixed herein for the service, group and grade of their positions, as so classified, shall not be affected by the provisions of this section; but such rates of compensation as fixed on said date for such positions shall be the rates at which the appropriations herein made may be expended for the compensation of such persons while holding such positions.’

Section 2255 of the General Code provides as follows: ‘The compensation of all employes in the classified civil service of the state shall be uniform for positions within the same service, group and grade as established by the classification of said service as at any time made by the rules of the State Civil Service Commission, provided a rate of compensation for such service, group and grade has been fixed by the General Assembly except that the compensation of persons employed in the classified civil service of the state at the time of the fixing of a rate of compensation for the service, group and grade by the General Assembly which may exceed the uniform rate so fixed, shall not be affected by the provisions of this section.’

We are confronted with the following situation upon which we desire your advice:

An employe in one of the state departments although specified as Clerk, Grade III, Rate A, for which the salary schedule normally provides a salary of \$900.00 per year, has been receiving \$1,400.00 per year due to the fact that he was employed at such salary since 1905 prior to the adoption of the salary schedule which was first adopted by the Legislature in 1917. It is now the desire of the Director of the department to increase this salary to \$1,600.00 per year, and as the Rules and Regulations of this Commission provide he has requested a survey of the duties of the position by this Commission. It appears clear to this Commission that in case the position is classified in a grade for which the salary schedule provides a compensation less than

\$1,400.00 per annum he would still be entitled to receive that amount, but should such survey determine that a higher classification of the position is warranted and that such classification carries with it a salary in excess of his present compensation of \$1,400.00 per year, is the position then required to fall within the rates of annual salaries provided by the salary schedule or is the position at no time affected by the provisions of the salary schedule?"

Your question requires construction of Section 2255 of the General Code and a part of Section 9 of the Appropriation Act by the Eighty-seventh General Assembly (House Bill No. 502), found on page 178 thereof.

Section 2255, General Code, reads as follows:-

"The compensation of all employes in the classified civil service of the state shall be uniform for positions within the same service, group and grade as established by the classifications of said service as at any time made by the rules of the state civil service commission, provided a rate of compensation for such service, group and grade has been fixed by the General Assembly, except that the compensation of persons employed in the classified civil service of the state at the time of the fixing of a rate of compensation for the service, group and grade by the General Assembly which may exceed the uniform rate so fixed, shall not be affected by the provisions of this section."

Section 9 of the Appropriation Act reads as follows:

"So much of the appropriation herein made for personal service as pertains to the compensation of employes in the following groups and grades of the classified civil service of the state, save and except employes in such groups and grades in the state universities and universities receiving state aid, normal schools, institutions under the control of the department of public welfare, the Ohio agricultural experiment station and the Ohio Soldiers' and Sailors' Orphans' Home, may be expended only in accordance with the classification and rules of the state civil service commission and at the following rates of annual salaries for the respective groups and grades:"

(Here follows classifications and groups.)

"provided, however, that rates and compensation of persons now employed in the foregoing groups and grades of the classified civil service of the state, which on the date of the passage of this act may exceed the uniform rate fixed herein for the service, group and grade of their positions as so classified, shall not be affected by the provisions of this section; but such rates of compensation as fixed on said date for such positions shall be the rates at which the appropriation herein made may be expended for the compensation of such persons while holding such positions. * * *"

The employe in question is employed as Grade III, Rate A Clerk, and under the provisions of Section 9 of the Appropriation Act would receive nine hundred dollars per annum compensation. You state, however, that he has been receiving fourteen hundred dollars per year for the reason that he has been employed at such salary since 1905. Such payment is lawful by virtue of the provisions of Section 2255, General Code, and the provisions of Section 9 of the Appropriation Act, supra.

You state that the director of the department wherein this person is employed wishes to increase the salary of said employe and that such director has requested a survey of the duties now performed by said employe.

You also state that you are of the opinion that if the service performed by said employe is within a classification for which a less amount than fourteen hundred dollars per annum is provided for in your schedule, that he would still continue to draw his compensation at the rate of fourteen hundred dollars per annum, and I agree with this conclusion to the extent of saying that the employe in question will be entitled to draw this salary so long as he holds the same position.

You then ask whether or not the employe would be entitled to draw a greater salary provided the services which he renders are within a classification for which a greater sum than fourteen hundred dollars per annum is provided.

Section 9 of the Appropriation Act must be construed with Section 2255 of the General Code. It is evidently a proviso placed in said act to express the legislative intent, that Section 2255, General Code, was not amended by implication in the passage of the Appropriation Act. Both sections refer to persons holding *positions* within the class for which a uniform rate of compensation is fixed and drawing larger salaries than provided for in said classification at the time the act was passed. If the position is changed the exception does not apply. The last part of Section 9, supra, specifically provides that:

"Such rates of compensation as fixed on said date for such positions shall be the rates at which the appropriation herein made may be expended for the compensation of such persons *while holding such positions.*"

If, however, such position be reclassified upon survey, so as to place the same in a classification or grade for which a higher rate of pay is provided, the incumbent would be entitled to draw the increased pay, it being my opinion that it was the plain intention of the legislature by Section 2255 and Section 9 of the Appropriation Act, supra, to provide that the salary incident to a certain position should not be reduced by a general classification and grading, but not to prevent such position from being reclassified in a higher grade thus entitling the incumbent thereof to increased pay.

It is therefore my opinion that an employe within the classified service of the state, who is by virtue of the provisions of Section 2255 of the General Code and Section 9 of the Appropriation Act (H. B. No. 502), receiving a greater salary than that provided for the position in the classification adopted by the legislature, may receive an increased salary if, upon a survey of said position, it is found that the duties of the position are within a classification for which a greater compensation than he is now receiving is provided by law.

Respectfully,

EDWARD C. TURNER,

Attorney General.

751.

BUREAU OF INSPECTION—CONCERNING AUTHORITY TO EXAMINE
ACCOUNTS OF HUMANE SOCIETIES.

SYLLABUS:

The Bureau of Inspection and Supervision of Public Offices has authority to examine the accounts of such humane societies as are organized under the provisions of Sections 10067, et seq., General Code, and receive public money as provided in Section 5653 or Section 12971 of the General Code. However, the payment from public funds of all or a