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1. HEALTH, DEPARTMENT OF—ASSISTANT DIRECTOR—MAY NOT SERVE SIMULTANEOUSLY AS CHIEF OF BUREAU OF DIRECT SERVICES IN DEPARTMENT OF HEALTH IF ENTITLED TO AND IF HE RECEIVES SEPARATE COMPENSATION IN EACH POSITION—SECTION 154-16 G. C.
2. A DOCTOR CLASSIFIED, PUBLIC HEALTH PHYSICIAN, GRADE IV, IN STATE CLASSIFIED CIVIL SERVICE—NOT PRECLUDED FROM DESIGNATION, ASSISTANT DIRECTOR, DEPARTMENT OF HEALTH—CIVIL SERVICE STATUS OF LATTER OFFICE CONTROLLED AND DETERMINED BY SECTION 154-19 G. C. NOT BY CLASSIFICATION TITLE OF OFFICE HOLDER.

SYLLABUS:

1. Because of the provisions of Section 154-16 of the General Code, an Assistant Director of the Department of Health may not serve simultaneously as Chief of the Bureau of Direct Services in the Department of Health if he is entitled to and receives separate compensation in each position.

2. The mere fact that a doctor bears the classification title of Public Health Physician, Grade IV, in the classified civil service of the state, does not preclude his being designated as Assistant Director of the Department of Health, for the civil service status of the latter office is controlled and determined by Section 154-19 of the General Code and not by the classification title of the office holder.

Columbus, Ohio, August 11, 1950

Hon. Carl W. Smith, Chairman
Civil Service Commission of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We are in receipt of the following communication from Doctor John D. Porterfield, Director of the Department of Health:

“ ‘As Public Health Physician, Grade IV, Dr. Peterson has been appointed Chief of the Bureau of Direct Services

in the Department, which position was created by the Public Health Council, pursuant to the provisions of Section 1235d of the General Code of Ohio.

“Section 154-5 of the General Code provides that 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.

“I am familiar with the last paragraph of Section 154-19 which provides that all offices created by Sections 154-5 and 154-6 of the General Code shall be in the unclassified service of the state. The positions of bureau and division chiefs in the Department of Health are created under authority provided in Section 1235(d) and are, therefore, subject to the requirements of the civil service laws of this state.

“Dr. Paul Q. Peterson has been designated by me to occupy the position of Assistant Director of Health, and since Dr. Peterson's other duties and responsibilities in the Department are not established by Section 154-6 or 154-8 of the General Code, it would seem to me that this position would be exempt from the provisions of the last paragraph of Section 154-19 of the General Code.’

“Our records show that Dr. Paul Q. Peterson is serving as Assistant Director of the Department of Health (new classification 4518—Public Health Physician, Grade IV, 45-1) in the unclassified service under the provisions of Section 154-5 of the General Code. The records further show that Dr. Peterson qualified in Examination No. 6346 for the position of Public Health Physician, Grade IV (4518-45) and was certified to the Director of the Department of Health on Certification No. 36237 made under date of March 1, 1950. Dr. Peterson's name is the only one on the eligible list for this position.

“Your opinion would be greatly appreciated upon the question whether Dr. Peterson may serve both in the classified service as Public Health Physician, Grade IV, and in the unclassified service as the Assistant Director of the State Department of Health.”

For purposes of this opinion, I have rephrased your question into two parts:

1. Can the Doctor in question, Dr. Paul Q. Peterson, who has been designated by the Director of the Department of Health as Assistant Di-

rector of the Department of Health—an unclassified civil service position—and who is now serving in such capacity, also serve as Chief of the Bureau of Direct Services in the Department of Health—a classified civil service position?

2. Is Dr. Peterson, who has the classification title of Public Health Physician, Grade IV, in the classified civil service of the state, precluded because of such title from holding the office of Assistant Director of the Department of Health—an office within the unclassified civil service of the state?

In considering these questions, it should be kept in mind that any impropriety in holding offices in both the classified and the unclassified civil service of the state must come from an incompatibility of the offices or from some prohibition in the laws governing civil service. In other words, there is nothing inherently wrong with dual office holding so long as the positions are compatible or are not prohibited by state statutes. 1945 Opinions of the Attorney General, Opinion No. 367.

Section 154-5 of the General Code, which governs the appointment of assistant directors in the departments created under Section 154-3 of the General Code, 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.”

Assuming that the Director of the Department of Health has authority to appoint an Assistant Director under the provisions of this section, then the civil service classification of such Assistant Director is determined by the provision of the last paragraph of Section 154-19 of the General Code reading:

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

This view is thought to be correct, even though the duties and responsibilities of the Assistant Director of the Department of Health are not established under Sections 154-6 or 154-8 of the General Code but rather

are determined and established by the Public Health Council under Section 1235(d) of the General Code, for the reason that the civil service classification of the office is determined by the office itself under Section 154-19, supra, and not by the fact that the duties and responsibilities thereof are created by the Public Health Council.

The Assistant Director of the Department of Health also comes within the purview of Section 154-16 of the General Code, which reads as follows :

“Each officer whose office is created by sections 154-3, 154-5 and 154-6 of the General Code shall devote his entire time to the duties of his office, and shall hold no other office or position of profit. In addition to his salary provided by law, each such officer and each member of the boards and commissions in the departments created by this chapter shall be entitled to his actual and necessary expenses incurred in the performance of his official duties.”

It is to be noted that this section specifically provides that an officer whose office is created by Section 154-5, supra, “shall devote his entire time to the duties of his office, *and shall hold no other office or position of profit.*” (Emphasis added.) Therefore, regardless of the question of compatibility or incompatibility of offices or positions, it is apparent that in our situation Dr. Peterson, by virtue of his being the Assistant Director, is precluded from accepting or occupying any other office or position within the Department of Health which would entitle him to compensation separate and distinct from that received in his capacity as an Assistant Director. Hence, it is my opinion that Dr. Peterson cannot serve simultaneously as Assistant Director and as Chief of the Bureau of Direct Services in the Department of Health, if he is entitled to and is receiving separate compensation in each position.

123 O.L., Amended Sub. House Bill No. 382, reads in part as follows :

“The assignment of positions, offices and employments to the classes within said classifications shall not alter in any way the present civil service status of employes occupying such positions. Nothing contained in this act shall be construed to transfer any position, office, employment or employee in the civil service of the state or any political subdivisions from the classified to the unclassified service or from the unclassified service to the classified service.”

In light of this provision, it is clear that the office of Assistant Director of the Department of Health has not been transferred from the unclassified civil service to the classified civil service by this act and that even if the said office were assigned to any of the enumerated classes provided for in the act, that it would not alter the present civil service status of one designated as Assistant Director. As such, it is thought that the sections of the General Code previously cited, relating to the office of assistant directors, still govern and control the civil service status of one serving as an Assistant Director in the Department of Health and that it is, therefore, immaterial whether the Assistant Director also bears a classification title of Public Health Physician, Grade IV, or not, for the office itself controls the civil service status and not the classification title of the office holder.

In summation then, it is my opinion that Dr. Peterson, even though he bears the classification title of a Public Health Physician, Grade IV, can be designated as and can serve as an Assistant Director of the Department of Health, for the office itself controls the civil service status rather than the classification title of the office holder. However, Dr. Peterson cannot also serve simultaneously as Chief of the Bureau of Direct Services in the Department of Health if the latter position entitles him to compensation separate and distinct from his compensation as Assistant Director because of the provisions of Section 154-16 of the General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.