

"There is no provision in said act for reimbursement of the state or its political subdivisions for the amount of the tax assessed and paid by the dealer in the event the state or its political subdivisions purchase motor vehicle fuel from a dealer, unless such fuels are used for other purposes than the propulsion of motor vehicles operated or intended to be operated, in whole or in part, upon the highways of the state, as provided in Section 9 of said act."

Answering your questions specifically, I am of the opinion that:

1. The township trustees of Greenville township may transfer a part of the general fund of such township to the road fund upon application to the Court of Common Pleas and the procuring of an order of such court for such a transfer, as provided in Sections 2296, et seq., of the General Code, which authorize the transfer by the township trustees of public funds under their supervision, except the proceeds of special levies, loans or bond issues when the procedure outlined in such sections is followed.

2. The keeper of a county jail, sometimes called the turnkey, who furnishes information leading to the arrest and conviction of an alleged murderer, may not lawfully claim a reward offered by the county commissioners for such information, but a prohibition inspector, appointed under authority of Section 6212-22 of the General Code, who complies with the terms of an offer of reward for information leading to the arrest and conviction of an alleged murderer, may claim such a reward and the same may lawfully be paid to him.

3. County commissioners are not entitled to a refund of the gasoline excise tax paid by them on motor vehicle fuels purchased from dealers, unless such fuels are used for purposes other than the propulsion of motor vehicles operated or intended to be operated, in whole or in part, upon the highways of the state, as provided in Section 9 of the gasoline excise tax law (Section 5534, General Code).

Respectfully,

EDWARD C. TURNER,

Attorney General.

285.

TREASURER OF STATE—HAS NO AUTHORITY TO APPOINT DEPUTIES
OUTSIDE OF CIVIL SERVICE.

SYLLABUS:

1. *The treasurer of the state of Ohio has no authority under the law to appoint a deputy or deputies who would be within the unclassified civil service of the state as provided in sub-section 9 of Section 486-8a, General Code.*

2. *It is within the province of the civil service commission in the first instance under the provision of sub-section 1 (b) of Section 486-8, General Code, to decide whether it is practicable to determine the merit and fitness of applicants for positions in the office of the treasurer of state by competitive examinations.*

COLUMBUS, OHIO, April 6, 1927.

HON. BERT B. BUCKLEY, *Treasurer of State, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your request for opinion under date of March 26, 1927, as follows:

"The State Treasury, at this time, has in its vault about \$130,000,000.00 in bonds with attached coupons, aside from the cash necessary to operate the department, that is to say—cash that is not sent to the banks each day.

Having in mind that a classified employe, under my predecessor, was caught pilfering from the public funds, and that during the administration of the state treasurer immediately preceding the last one there disappeared from the state treasury a Liberty bond in the sum of \$10,000.00, the opinion of the Attorney General is requested upon the following, to-wit:

Section 486-8 General Code reads as follows:

'The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) (Positions in unclassified service.) 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.
* * *

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.'

The Treasurer of State is under bond in the sum of \$800,000.00, as custodian of all state funds, the Workmen's Compensation Fund of \$48,000,-000.00 in bonds, and the State Teachers' Retirement System Fund aggregating some \$29,000,000.00 in bonds; the latter growing at the rate of \$5,000,000.00 per year, under existing law. This huge amount of bonds is not simply stored in the treasury, but on every day of the year we are busy clipping coupons attached to them. The ever increasing amount of bonds placed with the Treasurer of State, as custodian, results in the necessity of taking certain employes from their regular work and giving them access to these millions—in order to take care of that branch of the work on time, the coupons being required to be delivered from the treasury on certain dates; these coupons, themselves, ranging from \$2.13 to \$3,000.00, aggregating over \$8,000,000.00 in clipped coupons each year. On certain kinds of bonds this small coupon 'payable to bearer' amounts to as high as \$15,500.00, payable twice a year.

The question of the Treasurer of State is this:—Is it within the authority of the Treasurer of State or the State Civil Service Commission to say what employes in the state treasury fall within the zone described in 'paragraph 9' above quoted as 'holding a fiduciary relation' to the Treasurer of State?

Let it be understood that this question is submitted by a public official who is unusually friendly to the classified civil service, and there is no disposition, at this time, to seek the discharge of any existing employe; the question being purely a legal one on this paragraph of the Civil Service Act inserted for a definite purpose by the legislature, and having in mind, possibly, a certain condition which might sooner or later obtain. The question has no reference whatever to paragraph '8' of Section 486-8, General Code, which section operates in other state departments where no vast funds are involved, no losses have been sustained in the past or a 'fiduciary relation' may not exist."

The answer to your specific question, viz., whether the Treasurer of State or the Civil Service Commission may determine what employes in the state treasury fall within the class of employees described in sub-section 9 of Section 486-8a, General

Code as holding a fiduciary relation to the Treasurer of State, would seem to me to depend largely in the first instance upon whether or not the Treasurer of State is authorized to appoint an employee who might fall within the class of deputies exempted by said sub-section. In other words unless the Treasurer of State has authority to appoint a deputy or deputies who would fall within the purview of sub-section 9 above referred to, the right of the Treasurer of State or the Civil Service Commission to determine whether or not such deputy holds a fiduciary relation to the Treasurer of State is not involved.

Sub-section 9 of Section 486-8a, General Code, as set out in the quotation of said sub-section in your letter above, exempts from the classified civil service:

"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."

This section applies two tests in order to determine whether or not an appointee is one who may be exempted under sub-section 9:

1. Is the person appointed a *deputy authorized by law to act for and in the place of his principal?*
2. Does he hold a fiduciary relation to his principal?

The words "*authorized by law to act for and in the place of their principal*" as used in the statute modify and limit the word "deputies." Unless a deputy is authorized by law to act on behalf of his principal he is not a deputy within the purview of said sub-section 9, supra. An appointee may be designated a "deputy" but such appointee is not a deputy exempted from the classified service unless there is some specific provision in the law authorizing his appointment as a deputy and further authorizing him to act for and in the place of his principal.

Section 9 of the General Code provides:

*"A deputy, when duly qualified, may perform all and singular the duties of his principal. * * * The principal may take from his deputy or clerk a bond, with sureties, conditioned for the faithful performance of the duties of the appointment. In all cases the principal shall be answerable for the neglect or misconduct in office of his deputy or clerk."*

Section 9, General Code, supra, confers upon deputies the power to act for and in the place of their principals, but unless there is the further authority granted to a principal to appoint a "deputy" in whose favor the section can operate, it is ineffective.

State officers are limited to the exercise of such powers as are specifically conferred upon them by statute and such as are necessarily incident to the exercise of the powers so conferred. In order, therefore, to determine whether a "deputy" appointed by the treasurer of state falls within the exemption set out in said sub-Section 9 of Section 486-8a of the General Code, we must find some authority granted by statute to the treasurer of state to appoint a deputy.

I am unable to find any such authority in the General Code either expressly or impliedly given. While the powers and duties of the treasurer of state are scattered through the General Code, Chapter 4 of Title III, General Code (Sections 296 to 330-11 both inclusive) deals generally with that office. Implied authority is given to appoint a "cashier" of the state treasury by Section 321 of the General Code, and the salary of such cashier is fixed by Section 2249, General Code. However, the duties of such cashier, who is also secretary of the depositary commission, while not defined by statute, can hardly be such as would make him a deputy within the purview of Section 9 of the General Code, supra.

I do not wish to be understood, however, as holding that the treasurer of state is not entitled to have such clerks, assistants, stenographers, etc., as are necessary to enable him properly to carry out the functions and duties of his office. For example, Section 24-1, General Code, provides that the treasurer of state upon receipt of certain moneys therein specified such as taxes on the gross premium receipts of fire insurance companies, fees for inspection of petroleum, gasoline, etc., moneys payable to the state or superintendent of public works pursuant to any sale or lease of lands, etc., shall set up an account thereof as otherwise provided by law,

“and shall have authority to employ such assistants, clerical and expert help, or other employees, as he may deem necessary for the proper discharge of the duties of his office.”

In an opinion rendered by this department in 1915 involving the status of employees appointed under favor of Section 24-1, General Code, above referred to, it was held that such employees were not as a matter of law outside the classified service of the state civil service and that it was within the province of the civil service commission to determine whether or not it was practicable to ascertain the merit and fitness of such employees by competitive examination. (Opinions of the Attorney General for 1915, Volume II, page 1729.)

Your attention is invited to Section 78, General Code, which authorizes the governor to appoint certain secretaries and clerks; to Sections 157 and 158, General Code, which authorize the secretary of state to appoint an assistant and which fix his duties; to Sections 237 and 239, General Code, which authorize the auditor of state to appoint a deputy auditor and which fix his duties; and to Sections 334 and 335, General Code, which authorize the attorney general to appoint assistants and which fix their duties.

In view of the powers granted to the state executive officers in the sections above cited to appoint various assistants, deputies, secretaries, etc., the failure of the legislature to give similar powers to the treasurer of state seems significant. Just what was in the contemplation of the legislature in failing to give the treasurer of state the authority to appoint a deputy is not apparent. The fact remains that such power has not been granted and I am therefore constrained to hold that the treasurer of state has no authority to appoint a deputy who is authorized by law to act for and in the place of such treasurer, and who would therefore, fall within the exemption set out in sub-Section 9 of Section 486-8a of the General Code.

There being no authority in the treasurer of state to appoint a deputy authorized by law to act for and in his place, the question of whether such treasurer or the civil service commission shall determine whether an employee appointed by such treasurer holds a fiduciary relation to such treasurer is not before us.

While under the provisions of Section 486-8, General Code, the only specific exemptions allowed as such to the treasurer of state are two secretaries, assistants or clerks, and one personal stenographer, as provided in sub-section 8 of said section. I wish further to direct your attention to the following provisions of Section 486-8, General Code:

“(b) The classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

(1) The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations * * *”

Under the provisions above quoted it is my opinion that the civil service commission might, if it saw fit so to do, declare that it would be impracticable to determine by competitive examination, the merit and fitness of certain employees in the treasurer of state's office, particularly those whose duties would require the handling of large amounts of negotiable securities, coupons, and money.

Respectfully,

EDWARD C. TURNER,
Attorney General.

286.

APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—
ROBERT S. BEIGHTLER.

COLUMBUS, OHIO, April 6, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my consideration an official bond of Robert S. Beightler, given in accordance with the requirements of Section 1182 of the General Code, for the faithful performance of his duties as resident deputy state highway commissioner.

To this bond is attached a certificate of the surety company to the effect that the person signing said bond in behalf of said company is its attorney in fact, and is authorized to sign an official bond of this nature for the amount therein involved, binding upon said company.

It has been ascertained by this department that the said surety company is authorized to transact its business of fidelity and surety insurance in this state.

Finding said bond in proper legal form, and properly executed, I have noted my approval thereon, and am returning the same herewith to you.

Respectfully,

EDWARD C. TURNER,
Attorney General.

287.

DISAPPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—
OTHO WALTER MERRELL.

COLUMBUS, OHIO, April 6, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination the official bond of Otho Walter Merrell to the state of Ohio, in the sum of five thousand dollars (\$5,000) with the Aetna Casualty & Surety Company as surety, to cover the faithful performance of his duties as resident deputy state highway commissioner. This bond was given in pursuance of the provisions of Section 1182 of the General Code.

It will be observed that the name of the principal in the body of the bond appears as, "Otho Walter Merrell" while it has been signed and executed by "O. W. Merrell." There is no evidence before this department that Otho Walter Merrell and O. W. Merrell are one and the same person.