

1726.

TITLE OF OFFICE—FIXED BY LEGISLATURE IN APPROPRIATION
BILL—MAY NOT BE CHANGED BY CIVIL SERVICE COMMISSION.

SYLLABUS:

1. *Where the Legislature has in an appropriation bill, or otherwise, designated the title of any particular office or position in the civil service of the state, the title so fixed is the title of such office or position.*
2. *The Civil Service Commission is without power or authority to change the title of an office or position in the civil service of the state as fixed by the Legislature.*

COLUMBUS, OHIO, February 17, 1928.

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

DEAR SIR:—Receipt is acknowledged of your letter of recent date, in which you request my opinion, and which reads as follows:

“The current payroll of employes in the office of the Treasurer of State was disapproved by the Civil Service Commission because two employes exempt from classified service were entered with the designation appearing in the appropriation bill which we followed, as appearing on page 41 of the appropriation acts of the Eighty-Seventh General Assembly. The entry was ‘Bond Clerk,’ as appearing in H. B. 502, and the Civil Service Commission would not approve until this was changed to ‘Chief Bond Clerk,’ a designation of its own; similarly the entry of ‘Tax Clerk,’ as appearing in appropriation H. B. 502, was disapproved until it was changed to ‘Tax Collector,’ a designation by the Commission.

The designations used by the Treasurer of State are the names of the positions as passed in the appropriation bill by the last Legislature under the budget system in vogue in Ohio. We have been under the impression that boards and commissions are creations of the General Assembly and that the titles given in special items of employment, as passed by the General Assembly, would govern until changed by the General Assembly.

The opinion of the Attorney General is requested:—

(1) On the making up of a payroll or the annual roster for the Secretary of State should the Treasurer of State be governed by the titles appearing in the appropriation bill passed by the General Assembly or use the changed titles chosen by the Civil Service Commission?

(2) Has the Civil Service Commission the privilege or authority to make a survey or change the names of positions exempt from the classified Civil Service?”

I find nothing in any of the statutes relating to the office of the Treasurer of State in any wise affecting the proper designation of the positions in question.

On page 18 of House Bill No. 502, passed by the 87th General Assembly (the act making general appropriations for the current period) appear, among others, the following appropriation items to the Treasurer of State:

Personal Service—
 A. I. Salaries—
 * * *

	"Six months	Year	Eighteen Months
Bond Clerk -----	\$1,250.00	\$2,500.00	\$-----
First Assistant			
Bond Clerk -----	870.00	1,740.00	-----
Second Assistant			
Bond Clerk ----	870.00	1,740.00	-----
* * *			
Tax Clerk -----			
Tax Clerk—			
Gasoline - ----	900.00	1,800.00"	-----

As held in Opinion No. 413, rendered by this department under date of April 29, 1927, to the Director, Department of Public Welfare, "An appropriation act is a law of equal dignity during its existence with all other laws of the state." You will observe that in the appropriation items above set forth the Legislature has appropriated monies to pay the salaries of the persons filling the positions of "Bond Clerk", "First Assistant Bond Clerk", and "Second Assistant Bond Clerk", monies also being appropriated to pay the salary of the persons filling the positions of "Tax Clerk—Gasoline." Two things are apparent from this language, namely: First, that the amounts of money specified are appropriated, and second, that the monies are appropriated to pay the employes filling the positions designated. In so far as the employes, whose duties relate to bonds, are concerned, the Legislature has not seen fit to designate one position as "Chief Bond Clerk" and the others as "Bond Clerks", but has used the term "Bond Clerk" and the terms "First Assistant Bond Clerk" and "Second Assistant Bond Clerk." So also with reference to the employes whose duties relate to taxes, the names "Tax Clerk" and "Tax Clerk—Gasoline" were chosen.

Since, as above pointed out, House Bill No. 502 is, during its existence, a law of equal dignity with all other laws of the state, and since the Legislature has spoken and designated the two positions here involved as "Bond Clerk" and "Tax Clerk", these are the respective titles of such positions, unless the Civil Service Commission has been invested by law with power to change such titles and has acted in accordance with the power and authority so invested. No mere statutory board can override the will of the Legislature.

It has been repeatedly said by the Supreme Court of Ohio, as well as the courts inferior thereto, and by this department, that officers, boards and commissions created by statute have *only* such powers as are expressly conferred by statute, together with such implied powers as are necessary to carry into effect the powers expressly granted. As stated by Judge Wanamaker in his opinion in the case of *State, ex rel. Clark vs. Cook*, 103 O. S. 465, at 467, when speaking of boards of education:

'As administrative boards created by statute their powers are necessarily limited to such powers as are clearly and expressly granted by the statute. This same doctrine as to inferior boards or commissions was recently laid down in *State, ex rel. Locher, Pros. Atty., vs. Menning*, 95 Ohio St., 97.'

See also *Elder vs. Smith, Aud., et al.* 103 O. S. 369; *Peter vs. Parkinson, Treas.*, 83 O. S. 36; *State ex rel. vs. Teatman*, 22 O. S. 546; *Ireton vs. State, ex rel.*, 12 O. C. C. (N. S.) 202, affirmed without opinion, *Ireton vs. State*, 91 O. S. 562; and *State ex rel. vs. Commissioners*, 8 O. N. P. (N. S.) 281.

If the Civil Service Commission has the power to fix or change the title of any particular position in the civil service of the state that power in all probability would be found in the statutes creating the commission and prescribing its powers and duties, to-wit, Sections 486-1 to 486-31, inclusive, General Code. I find no such authority in that group of Sections or in any other Section of the Code.

Section 486-9, General Code, directs the Civil Service Commission to put into effect rules for the classification of officers, positions and employments in the civil service of the state and the several counties thereof, but the duty imposed by that section is entirely different from the authority to change the designation or title by which a particular position shall be known, as fixed by the Legislature.

Apparently, in compliance with the direction contained in Section 486-9, General Code, the commission has promulgated Rule XIII, the first section of which provides:

“All positions in the classified service shall be divided broadly according to similar or related functions into services, each service shall be divided into groups representing distinctive lines of work requiring distinctive elements of training and experience within that service, and each group shall be divided into grades according to the responsibility and progressive requirements of experience and training of the positions falling within each group, in accordance with the following schedule:—”

Then follows a schedule classifying positions first as to service and second as to groups within such service.

Section 2 of Rule XIII reads:

“Titles of all positions in the classified service shall be as nearly as possible descriptive of the duties attached thereto and indicative of the character thereof, and shall be the same for all offices and places requiring the same kind of service regardless of location of employment. A change of title shall not operate to remove an officer or employe from the classification or grade of his position unless the duties of the position are changed.”

I think it may be fairly said that in promulgating Section 2 of Rule XIII, supra, the commission has impliedly, at least, recognized that the appointing officer has the power to designate the title of any position under his supervision and control, especially when the last sentence of such section is considered.

In the instant case the Legislature has designated the two positions under consideration as “Bond Clerk” and “Tax Clerk” and I am of the opinion that these are the titles of the positions in question, and that the Civil Service Commission does not have the power or authority to change such titles.

Answering your questions specifically, I am of the opinion that in making up a payroll or the annual roster for the Secretary of State, you should be governed as to the positions under your supervision and control by the titles of such positions as designated by the Legislature in the appropriation bill or otherwise, and that the Civil Service Commission does not have the power or authority to fix or change the titles of such positions.

Respectfully,
EDWARD C. TURNER,
Attorney General.