

and so long as maturities are fixed within the time limited the requirements of the statute are met.

As a matter of public policy good financing would call for making loans as short as possible.

It is therefore my opinion that bonds may be issued which will mature within a less period than the maximum fixed by law.

Respectfully,
EDWARD C. TURNER.
Attorney General.

121.

COMMISSIONER OF MOTOR VEHICLES—IS THE APPOINTED AUTHORITY REFERRED TO IN SECTION 486-13, GENERAL CODE—IS IN THE UNCLASSIFIED CIVIL SERVICE—IS NOT ENTITLED TO THE THREE PERSONAL EXEMPTIONS AUTHORIZED BY PARAGRAPH 8, DIVISION (a), SECTION 486-8, GENERAL CODE.

SYLLABUS:

1. *The commissioner of motor vehicles is the appointing authority to whom certifications under Section 486-13, General Code, should be made by the civil service commission to fill classified positions in the bureau of motor vehicles.*
2. *The position of commissioner of motor vehicles is in the unclassified civil service of the state of Ohio.*
3. *The commissioner of motor vehicles is not entitled to the three personal exemptions authorized by paragraph 8, division (a) of Section 486-8, General Code, which permits an exemption from the classified service of two secretaries, assistants or clerks and one personal stenographer for each of the principal appointive executive officers, authorized by law to appoint such secretary, assistant or clerk and stenographers.*

COLUMBUS, OHIO, March 1, 1927.

The State Civil Service Commission, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your letter of recent date, in which you quote Section 6290-1, of the General Code, and state:

“Prior to the adoption of this act the automobile department was treated as a division of the office of the Secretary of State and the appointing authority for all employes of the automobile division was the Secretary of State.”

You inquire as follows:

- “1. Is the Commissioner of Motor Vehicles the appointing authority to whom certifications shall be made by this department to fill classified positions.
2. Is the position of Commissioner of Motor Vehicles in the classified or unclassified service?
3. Is the Commissioner of Motor Vehicles entitled to the three personal exemptions outlined under Section 486-8-8, which permits two secretaries, assistants or clerks and one personal stenographer, exempt from the classified service for each of the principal appointive executive officers?”

The bureau of motor vehicles and the office of commissioner of motor vehicles are created by Section 6290-1 of the General Code (111 O. L. 460), as follows:

"There is hereby created in the office of the secretary of state, a bureau of motor vehicles which shall be administered by a commissioner of motor vehicles referred to hereafter in this act as the commissioner. The commissioner of motor vehicles shall be appointed by the secretary of state and shall serve at his pleasure. He shall be paid a salary of thirty-six hundred dollars per annum. It shall be the duty of the commissioner to enforce the motor vehicle laws of the state and he may appoint such number of deputies, inspectors, clerks, stenographers and other employes as may be necessary for such purpose and fix their compensation. The salaries and the actual necessary expenses incurred by the commissioner or any of his subordinates when approved by the secretary of state, shall be paid from the state treasury on the warrant of the auditor of state. The commissioner of motor vehicles shall give a bond for the faithful performance of his duties in such amount and with such security as the secretary of state may approve. When in the opinion of the commissioner of motor vehicles, it is deemed advisable, any deputy or other employe may be required to give bond in such amount and with such security as he may approve.

The secretary of state may investigate the activities of the bureau of motor vehicles, and have access to its records at any time, and the commissioner shall make a report to the secretary of state at any time upon request."

1. You will note that by the terms of the section above set out it is the duty of the commissioner of motor vehicles to enforce the motor vehicle laws of the state and that *he may appoint* such number of deputy inspectors, clerks, stenographers and other employes as may be necessary for such purpose and fix their compensation.

By Section 486-13, General Code, also referred to in your letter, it is provided in part as follows:

"The head of a *department, officer or institution* in which a position in the classified service is to be filled shall notify the commission of the fact, and the commission shall, except as provided in Sections 486-14 and 486-15 of the General Code, *certify to the appointing officer* thereof the names and addresses of the three candidates standing highest in the eligible list for the class or grade to which said position belongs. * * * Appointments to all positions in the classified service, as herein defined, that are not filled by promotion, transfer or reduction, as provided for in this act and the rules of the commission prescribed thereunder, shall be made only from those persons whose names are certified to the *appointing officer* in accordance with the provisions of this act, and no employment, except as provided in this act, shall be otherwise given in the classified service of this state or any political subdivision thereof. The *appointing officer* shall notify the commission of such position to be filled and shall fill such position by appointment of one of the three persons *certified* to him as provided in this act. Forthwith, upon such appointment and employment, each *appointing officer* shall report to the proper civil service commission the name of such appointee or employe, the title and character of his office, the duties of same, the date of the commencement of same, and the salary or compensation thereof, and such other information as the commission requires in order to keep the roster herein men-

tioned. All original and promotional appointments shall be for a probationary period * * *.”

(Italics the writer's.)

It is obvious that this section relates to others than the “head of a department,” because following this expression are the words “officer or institution.” It is a rule of construction that a statute will not be so interpreted as to make the legislature guilty of using words needlessly, and it is apparent that when the legislature employed the term “the head of a department, *officer*, or *institution*,” it referred to others than the head of a department. It will also be observed that in this entire section, the term “appointing officer” is used no less than six times. This term is so plain and unambiguous as to require no construction and clearly means the officer having the power of appointment. In order that there might be no question, however, the legislature by (Section 486-1a) Section 486-1, entitled “Definitions,” provided:

“* * * *”

6. The term ‘appointing authority’ signifies the *officer*, commission, board, or body having the power of appointment to or removal from positions in *any office*, department, commission, board or institution.

* * * *”

Since by the terms of Section 6290-1, *supra*, the commissioner of motor vehicles is the officer empowered to appoint the deputies, inspectors, clerks, stenographers and other employes of his bureau, for the reasons indicated it is my opinion that certifications should be made to the commissioner of motor vehicles to fill the positions in his bureau in the classified civil service.

2. Paragraph 9 of Section 486-8, General Code, places in the unclassified service:

“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 office of commissioner of motor vehicles was created by Section 6290-1, General Code, *supra*, enacted March 17, 1925 (111 O. L. 460). Prior to that time the automobile department was directly in the hands of the secretary of state, who made all the appointments for positions in that department. Under the law as it stood prior to the enactment of Section 6290-1, General Code, the Supreme Court of Ohio held, in the case of *State ex rel. Bryson vs. Smith*, 101 Ohio St., 203, that a cashier in the automobile department, while not actually termed a deputy by the statute, held a fiduciary relation to his principal (the secretary of state) and that the qualifications of such cashier could not properly be determined by competitive examination. In that case the court discussed Section 10, Article XV of the Constitution and Section 486-8 of the General Code, and said (page 209):

“But the occupant of this position is one who, although not actually termed a deputy by the statute, yet is shown by the allegations of this answer to be one who holds a fiduciary relation to his principal; and the legislature by the passage of Section 486-8, which exempted such applicants from examinations, was merely giving effect to the letter and spirit of the constitutional provision which is here involved. The name is not of the essence of the place.”

By the provisions of Section 6290-1, General Code, *supra*, the commissioner of

motor vehicles serves at the pleasure of the secretary of state. He is required to give a bond in such amount and with such security as the secretary of state may approve; the activities of the bureau may be investigated at any time by the secretary of state, and the commissioner shall make a report to the secretary of state at any time upon request. In other words, the commissioner of motor vehicles is entirely subordinate and responsible to the secretary of state and sustains a fiduciary relation to him. He may also be removed at any time by the secretary of state, and this without the necessity of furnishing him with a copy of the order of removal and the reasons for the same and giving him an opportunity to file an explanation; nor has such commissioner the right in the case of removal to appeal to the civil service commission as provided in Section 486-17a of the General Code.

Answering your second question, it is my opinion, therefore, that the position of commissioner of motor vehicles is in the unclassified civil service of the state.

3. Paragraph 8, division (a) of Section 486-8 of the General Code provides for the following exemptions in the unclassified service:

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

The exemptions above referred to are allowed to elective state officers and principal executive officers, boards or commissioners only. The commissioner of motor vehicles is subordinate, by the terms of Section 6290-1 of the General Code, to the secretary of state. He is not, therefore, a principal executive officer and, in answer to your third question, it is my opinion that he is not entitled to the exemptions provided for in paragraph 8, division (a) of Section 486-8, General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

122.

REPAIRS TO ROADS AND BRIDGES, ETC.—CASES REQUIRING IMMEDIATE REPAIRS DESIGNATED AS "EMERGENCY REPAIRS" UNDER SECTION 2792-1, GENERAL CODE, ARE NOT "EXTRAORDINARY EMERGENCIES" WITHIN THE MEANING OF SECTION 17-1, GENERAL CODE—COUNTY SURVEYOR IS NOT AUTHORIZED TO PAY WORKMEN IN GOING TO AND RETURNING FROM THE PLACE DESIGNATED FOR THEM TO REPORT.

SYLLABUS:

1. *Cases requiring immediate repairs to roads, bridges and culverts as provided by Section 2792-1, General Code, designated in such section as "emergency repairs," are not cases of "extraordinary emergency" within the meaning of Section 17-1 of the General Code.*

2. *The county surveyor is without authority to pay workmen engaged in the repair and maintenance of roads within such county for the time spent by said work-*