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1. VACANCY—POLICE OR FIRE CHIEF—TO FILL—NECESSARY TO HOLD COMPETITIVE CIVIL SERVICE EXAMINATION.
2. AGE LIMITATIONS—SECTIONS 486-10b, 486-10c G. C.—NOT APPLICABLE TO COMPETITIVE PROMOTIONAL EXAMINATIONS GIVEN UNDER SECTION 486-15a G.C.
3. TEMPORARY PROVISIONAL APPOINTMENT—EXCEPTION—POLICE OFFICER MAY NOT BE ELEVATED FROM RANKS TO CHIEF WITHOUT HAVING PASSED A COMPETITIVE PROMOTIONAL EXAMINATION.
4. AGE LIMITATIONS—SECTIONS 486-10b, 486-10c G. C.—NOT APPLICABLE TO COMPETITIVE PROMOTIONAL EXAMINATIONS—POSITIONS SUPERIOR IN GRADE OR RANK TO THOSE OF PATROLMAN OR REGULAR FIREMAN.

## SYLLABUS:

1. In the event of a vacancy in the position of police or fire chief, it is necessary to hold a competitive civil service examination.

2. The age limitations found in Sections 486-10b and 486-10c, General Code, are not applicable to competitive promotional examinations given in accordance with Section 486-15a, General Code.

3. Except in case of a temporary provisional appointment, a police officer may not be elevated from the ranks to the position of chief without first having passed a competitive promotional examination.

4. The age limitations of Sections 486-10b and 486-10c, General Code, are not applicable to competitive promotional examinations for positions superior in grade or rank to those of patrolman or regular fireman.

Columbus, Ohio, July 23, 1951

Hon. William H. Irwin, Prosecuting Attorney  
Belmont County, St. Clairsville, Ohio

Dear Sir:

I have before me your request for an opinion which reads in part as follows:

“In the event of a vacancy as police or fire chief, is it necessary to hold a competitive civil service examination, and in such

an examination, are the age limits of 21 to 29 years in effect, or can a police officer be elevated from the ranks to a chief's position without such an examination.

"In the need for elevating men from lower to higher ranks within each department on promotional competitive examination, do the age limits of 21 to 29 years apply?"

For purposes of simplicity, I will separate your request into the following questions:

1. In the event of a vacancy in the position of police or fire chief, is it necessary to hold a competitive civil service examination?

2. In such competitive examination for the position of police or fire chief are the age limits of 21 to 29 years in effect?

3. May a police officer be elevated from the ranks to a chief's position without such an examination?

4. Do the age limits of 21 to 29 years apply to competitive promotional examinations given for positions superior to that of patrolman or regular fireman?

In the event of a vacancy in the position of police or fire chief, I find that a competitive civil service examination is necessary under the following language contained in Section 486-15a, General Code:

"\* \* \* No position above the grade or rank of patrolman or regular fireman in a police or fire department shall be filled by any person unless he shall have first passed a competitive promotional examination. \* \* \*"

The age requirements for examination and appointment of policemen and firemen are governed by Sections 486-10b and 486-10c, General Code, (122 Ohio Laws, 183, 184, effective September 4, 1947.) Section 486-10b, General Code, provides as follows:

"No person shall be eligible to take an examination for and receive an original appointment to a police department, subject to the provisions of the civil service laws of Ohio, unless he has reached the age of twenty-one and is not more than twenty-nine years of age."

Section 486-10c, General Code, provides as follows:

"No person shall be eligible to take an examination for and to receive an original appointment to a fire department, subject

to the provisions of the civil service laws of Ohio, unless he has reached the age of twenty-one and is not more than twenty-nine years of age."

The above sections specifically refer to "original" appointment and were enacted subsequent to Section 486-15a, General Code, which reads in part as follows:

"No position above the grade or rank of patrolman or regular fireman in the police or fire department shall be filled by original appointment. \* \* \*"

Section 486-15a, General Code, makes further distinctions between original appointments and promotional appointments. Under the principle of statutory construction, *expressio unius est exclusio alterius*, it is apparent that the legislature intended the age requirements to be applicable only to original appointments and not to competitive promotional examinations given subsequent to original appointments in a police department or a fire department.

The answer to the third question which I find in your request is governed by the language of Section 486-15a, General Code, which prohibits the appointment of a police officer to the position of chief without first having passed a competitive promotional examination. This, of course, does not limit the power of a municipal civil service commission to make a temporary promotion by provisional appointment to fill the position of chief of police pending the results and certification of the successful candidate in a competitive promotional examination, held in accordance with the provisions of Section 486-15a, General Code.

The principles applicable to the effect of the age limitations upon competitive promotional examinations for the position of police or fire chief are also applicable to competitive promotional examinations for all ranks superior to that of patrolman or regular fireman.

Therefore, in specific answer to your request, it is my opinion that:

1. In the event of a vacancy in the position of police or fire chief, it is necessary to hold a competitive civil service examination.
2. The age limitations found in Sections 486-10b and 486-10c, General Code, are not applicable to competitive promotional examinations given in accordance with Section 486-15a, General Code.

3. Except in case of a temporary provisional appointment, a police officer may not be elevated from the ranks to the position of chief without first having passed a competitive promotional examination.

4. The age limitations of Sections 486-10b and 486-10c, General Code, are not applicable to competitive promotional examinations for positions superior in grade or rank to those of patrolman or regular fireman.

Respectfully,

C. WILLIAM O'NEILL

Attorney General