

for the year 1937.

Upon examination of the warranty deed executed by Isaac Rhoads and Bessie Rhoads, I find that the same has been executed and acknowledged by said grantors in the manner provided by law and that the form of this deed is such that the same is legally sufficient to convey the above described property to The Ohio State Archaeological and Historical Society by fee simple title with a covenant of warranty that the property is free and clear of all encumbrances save and except the taxes for the year 1937 as to which the deed contains a recital that the grantee assumes and agrees to pay such taxes. In this connection, I am advised by your communication that your Society has made arrangements to pay these taxes from funds at its disposal.

Inasmuch as the tract of land here in question and other lands contiguous or adjacent thereto now forming Fort Hill State Memorial Park have an historical interest within the purview of Section 10198-1, General Code, 115 O.L., 207, The Ohio State Archaeological and Historical Society is authorized to acquire this property for the purpose above stated. I am, accordingly, approving the abstract of title submitted to me and likewise the deed executed by The Ohio State Archaeological and Historical Society by Isaac Rhoads and Bessie Rhoads, his wife, as is evidenced by my approval endorsed upon said deed.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

890.

AUDITOR OF STATE—NO POWER TO INVESTIGATE ACTIVITIES OF CIVIL SERVICE COMMISSION—CIVIL SERVICE LAW—RULES AND REGULATIONS ADOPTED BY COMMISSION.

SYLLABUS:

The Auditor of the State of Ohio, as such officer, does not have the power or authority to conduct an investigation into the activities of the State Civil Service Commission for the purpose of determining whether the Commission has properly administered the Civil Service Law and the rules and regulations adopted by said Commission.

COLUMBUS, OHIO, July 22, 1937.

The State Civil Service Commission, State Office Building, Columbus, Ohio.

GENTLEMEN:

Your letter of recent date received, which reads as follows:

“The Laws of Ohio provide that the Auditor of State shall be the chief accounting officer of the state and shall keep in his office full and accurate accounts of all moneys, bonds, stocks, securities and other property paid into or deposited into the State Treasury and of all moneys, bonds, stocks, securities and property paid out of or properly transferred from the State Treasury; and manage and direct all negotiations and correspondence concerning them.

The law also provides that the Auditor of State shall keep an account of all appropriations made by law and of warrants drawn on and moneys paid out of them, and that the Auditor of State shall examine each voucher presented to him, or claim for salary of an officer or employe of the state, and if he finds it is to be a valid claim against the state and legally due, he shall issue thereon a warrant on the Treasurer of State for the amount found due. He shall draw no warrant on the Treasurer of State for any claim unless he finds it legal, and that there is money in the Treasury which has been duly appropriated to pay it.

Section 486-7-4 of General Code of Ohio provides that the State Civil Service Commission shall make investigations, either sitting in banc or through a single commissioner or the chief examiner, concerning all matters touching the enforcement and effect of the provisions of the Civil Service Laws of Ohio and the administrative rules of the commission prescribed thereunder.

In other words, a definite and orderly method of investigation is specifically provided by statute and the right of such an investigation is directly conferred upon the Civil Service Commission and the Governor, and in the opinion of this Commission no such power of investigation of the intent and spirit of the Civil Service Laws of Ohio and the administration thereof is granted to the Auditor of State, except insofar as moneys,

bonds, stocks, securities and property of the Commission is concerned.

We desire therefore to respectfully request your official opinion upon the right and authority of the Auditor of State to investigate matters of policy and administrative procedure of the Commission, other than the collection of examination fees provided by Section 486-11 G. C., and the state property of this Commission, and the expenditure of funds appropriated by the legislature and set aside for a specific purpose which the legislature has provided.”

Your inquiry presents the question of whether the Auditor of the State of Ohio has the power and authority to investigate the Civil Service Commission of the State of Ohio for the purpose of determining whether the Civil Service Commission has properly administered the Civil Service Law of this State.

It is a fundamental rule of public law that a public officer has only such authority as is expressly granted to him by statute and such implied authority as is necessary to carry out the express authority. An examination of the statutes pertaining to the office of State Auditor, particularly Sections 284 et seq., of the General Code of Ohio, fails to disclose any express grant of authority authorizing the Auditor of State to investigate the activities of a state board, such as the Civil Service Commission, for the purpose of determining whether such board has been guilty of misfeasance, non-feasance, or mal-feasance in office. The above cited statutes do empower the Auditor of State to examine and audit the accounts of the Civil Service Commission for the purpose of determining whether the Commission has properly accounted for money and property belonging to the State of Ohio, and has in a legal manner disbursed the monies appropriated to the Commission's use by the Legislature.

The civil service law of Ohio (Sections 486-1 to 486-31, inclusive, of the General Code) is a special and all inclusive act which provides for the establishment and administration of the merit system in Ohio. At no place in the civil service law is any authorization given the Auditor of State to investigate the activities of the Civil Service Commission insofar as such activities relate to the administration of the civil service law of the State of Ohio.

An examination of the civil service law reveals that the Legislature has conferred the power to investigate the activities of the Civil Service Commission upon the Governor or a person appointed by the Governor. Section 486-7 of the General Code reads in part as follows:

“The Commission shall,

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Second: (Records.) Keep minutes of its own proceedings and records of its examinations and other official actions. All such records, except recommendations of former employers, shall be open to public inspection under reasonable regulations; provided, however, that the governor or any person designated by him, may, for the purpose of investigation, have free access to all such records, whenever he has reason to believe that the provisions of this act or the administrative rules of the commission prescribed thereunder, are being violated.”

If the Governor, under the express authority given him by the foregoing paragraph, finds that the Commission has improperly administered the civil service law, he has authority under Section 486-3 of the General Code to remove either or both members of the Civil Service Commission. Section 486-3 of the General Code reads in part as follows:

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The governor may remove any member of the state civil service commission at any time for inefficiency, neglect of duty, or malfeasance in office, having first given to the commissioner a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense and any such act or removal by the governor shall be final. A statement of the findings of the governor, the reasons for his action, and the answer, if any, of the commissioner, shall be filed by the governor with the secretary of state and shall be open to public inspection. At the time of any appointment both commissioners shall not be adherents of the same political party.

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There is only one other check provided by the civil service law upon the activities of the Civil Service Commission. This is to be found in Section 486-29 of the General Code, which reads as follows:

“The right of any taxpayer to bring an action to restrain the payment of compensation to any person appointed to or holding any office or place of employment in violation of provisions of this act, shall not be limited or denied by reason of the fact that said office or place of employment shall have been classified as, or determined to be classified as, not subject to competitive examination; provided, however, that any judgment or

injunction granted or made in any such action shall be prospective only, and shall not affect payments already made or due to such persons by the proper disbursing officers, in accordance with the civil service rules in force at the times of such payments."

It is evident from a reading of the foregoing sections of the General Code that the activities of the Civil Service Commission of the State of Ohio with reference to the administration of the law and the rules and regulations adopted by the Commission, are subject to scrutiny by the Governor, a person appointed by the Governor, or in an action instituted by a taxpayer.

The general public, under Section 486-7 of the General Code, *supra*, has the right to examine the proceedings of the Commission and other official actions taken by the Commission, as well as the records of the examinations conducted by it. The only exception to this is that the public is not given the right to see recommendations of applicants from former employers. Unquestionably the Auditor, as a private citizen, has the right to examine all of the records of the Civil Service Commission, with the exception of recommendations of former employers. This right, however, is his as a private citizen and not as Auditor of State. In other words, since the Legislature has not seen fit to authorize the State Auditor to make such investigation, he cannot use public funds or employees of his office to conduct such an investigation, although he has as a private citizen, the right to inspect its records.

In specific answer to your question, it is, therefore, my opinion that the Auditor of the State of Ohio, as such officer, does not have the power or authority to conduct an investigation into the activities of the State Civil Service Commission for the purpose of determining whether the Commission has properly administered the civil service law and the rules and regulations adopted by said Commission.

Respectfully,

HERBERT S. DUFFY,
Attorney General.