

\$5,000.00, with sureties as indicated, to cover the faithful performance of the duties of the officials as hereinafter listed:

Henry Walsh, Resident District Deputy Director, Clinton County—Fidelity and Deposit Company of Maryland.

V. E. Waterloo, Resident District Deputy Director, Monroe County—Maryland Casualty Company.

T. S. Brindle, Resident Division Deputy Director (Acting) Division No. 12—United States Fidelity and Guaranty Company.

Leon W. Wolford, Resident District Deputy Director, Fairfield County—The Ohio Casualty Insurance Company.

Finding said bonds to have been properly executed, I have accordingly approved the same as to form, and return them herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3029.

DISAPPROVAL, GAME REFUGE LEASE IN HENRY TOWNSHIP, WOOD COUNTY, OHIO.

COLUMBUS, OHIO, March 9, 1931.

HON. JOHN W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval the following Game Refuge Lease, in duplicate:

<i>No.</i>	<i>Lessor</i>	<i>Township</i>	<i>County</i>	<i>Acres</i>
2102	Emma J. Auverter	Henry	Wood	160

Upon examination, I find that the Original Order Sheet and duplicate copy and the Lease proper and duplicate are not signed by yourself as commissioner.

I am therefore returning to you the above lease without my approval endorsed thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3030.

CIVIL SERVICE—MUNICIPAL AND STATE—CONSTITUTIONALITY OF PROPOSED AMENDMENT TO LAW DISCUSSED.

SYLLABUS:

Constitutionality of amended House Bill No. 250, discussed.

COLUMBUS, OHIO, March 9, 1931.

HON. EMMA M. CRAMER, *Chairman, Civil Service Committee, Ohio House of Representatives, Columbus, Ohio.*

DEAR MADAM:—In your recent communication you request my opinion on the legality of Amended House Bill No. 250, which you enclose. Said bill is entitled:

“A Bill to amend sections 486-17a, 486-17b and 486-19 and to repeal section 486-18, of the General Code, relative to state and municipal civil service.”

Said bill purports to amend Section 486-17a of the General Code, which section now provides that the tenure of every officer and employe shall be during good behavior and efficient service. The section further provides for the removal from office for incompetency, dishonesty, drunkenness, insubordination and other misconduct. The section also provides the manner of removal and for an appeal to the civil service commission. It also now provides that in case of the removal of the chief of police or chief of the fire department, an appeal may be had from the decision of the municipal commission to the court of common pleas. The proposed amendment to this section, submitted by you, undertakes to grant the same right of appeal to any member of the police or fire departments that is granted to chiefs thereof.

Section 486-17b of the General Code, now provides for the reduction of forces in a police or fire department, through lack of work or funds or for causes other than those specifically mentioned in Section 486-17a, of the General Code. The amended bill purports to grant to an employe who has been laid off due to such causes, providing he is the oldest employe in point of service of those laid off, the right of reappointment in case the position is recreated or reestablished within two years from the date of abolishment, whereas, under existing law such right of reappointment exists for only one year. The proposed amendment to said section further provides:

“When a position above the rank of patrolman in the police department and above the rank of regular fireman in the fire department is abolished and the incumbent has been permanently appointed in accordance with the provisions of this act, he shall be demoted to the next lower rank and the youngest officer in point of service in the next lower rank shall be demoted, and so on down until the youngest person in point of service has been reached, who shall be laid off.”

Section 486-19 of the General Code, provides for the creation of a municipal civil service commission, composed of three members. The amended bill provides for two persons to constitute such board. The present law further authorizes the state civil service commission to investigate a municipal commission or any member thereof, and if in the judgment of said commission, it finds any violation or failure on the part of a commissioner to perform the duties imposed by law, it shall report such violation in writing, to the chief executive authority of such city, which report shall be a public record, and such commissioner may be removed after notice and hearing. The proposed amendment contains the following changes in the original section with reference to the removal of such municipal commissioners as indicated in the following provisions:

“Upon the receipt of such report from the state civil service commission, charging a municipal civil service commissioner with violating or

failing to perform the duties imposed by law, or willfully or through culpable negligence violating the provisions of the law by failure to perform his duties as a member of such municipal civil service commission along with the evidence on which such report is based, the chief executive officer of such municipality shall forthwith remove such municipal civil service commissioner. In all cases of removal of a municipal civil service commissioner by the chief executive authority of any such city, an appeal may be had to the court of common pleas, in the county in which such municipality is situated to determine the sufficiency of the cause of removal. Such appeal shall be taken within ten days from the decision of the chief executive authority of such city. Should the common pleas court disaffirm the judgment of the chief executive authority, such commissioner shall be reinstated to his former position in the municipal civil service commission."

Section 486-18, which is not amended but repealed by said bill relates to the establishment of efficiency grades of those in the classified service and contains numerous specific directions with reference thereto.

In your communication you state that questions have been raised as to the constitutionality of the bill and specifically inquire whether the proposed changes in the present law as contemplated in said bill, affect the home rule provisions relating to charter cities which have already adopted their own civil service regulations. You further specifically inquire whether Section 486-17b is in conflict with Section 486-17a, or any other section of the civil service law.

In the first place, it may be observed that the amendments suggested do not make any fundamental change in the law as it now exists. Certain details are changed, which of course is a matter of expediency, to be determined by the Legislature. In so far as Section 486-17a is concerned, it will be self-evident that a law which may properly grant special appeals for the chief of police and the chief of the fire department could likewise grant such authority to any member of either department in so far as any fundamental legal question is concerned. It will be obvious, from a reading of Section 486-17b, that the changes mentioned will in no wise fundamentally change the character of the section. As hereinbefore stated, the amendment relates to details; the section now makes an exception in the case of policemen and firemen with reference to layoffs and demotions in case that a position is abolished, and the proposed amendment changes, in some respects, the details, but makes no change that would in any way call into question the constitutionality of the act.

Section 486-19, General Code, is proposed to be amended so as to provide two members of the municipal civil service commission rather than three members, as the section now provides. It will be observed that this is merely a question for the legislature to determine. It may be pointed out, in this connection, that the state civil service commission was originally composed of three members and for a number of years the law has required only two members which enables the commission as now constituted, to successfully function in carrying out the provisions of the law. It will therefore appear to be within the province of the legislature to make such requirement as it desires with respect to the number of members that shall constitute the board. The proposed amendment to said section would make it mandatory for the executive authority of a municipality to remove a member of the board when the state civil service commission files a report charging a municipal civil service commissioner with violating or failing to perform the duties imposed by law, whereas the law now makes such removal optional. Under

the amendment in the event of such removal the commissioner has an appeal to the court of common pleas.

It would appear that the proposed amendment to Section 486-19, does not in any way fundamentally change the original section. It provides a different number to constitute the municipal civil service commission and provides a different method of removal from that which the law now provides.

The repeal of Section 486-18, General Code, would not seem to involve any constitutional problem. Section 10 of Article XV of the Constitution hereinbefore set forth requires appointments and promotions to be made according to merit and fitness to be ascertained as far as practicable, by competitive examinations. It will be observed that Section 486-15, General Code, contains ample authority for the commission to keep records of efficiency. Therefore, Section 486-18, is another matter of detail that may be changed at the will of the legislature. Sections 486-1 to 481-31, inclusive, of the General Code, which constitute the state civil service law, passed in pursuance of the provisions of Section 10 of Article XV of the Ohio Constitution, have been so frequently upheld by the Supreme Court of Ohio, as to make it unnecessary to cite authorities herein. Said constitutional provision, above referred to, reads:

“Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.”

In examining the provisions of the amended bill which you submit, it is evident that there is no violation of the constitutional provision above set forth. However, your question necessarily requires consideration of Section 3 of Article XVIII of the Ohio Constitution, which provides the so-called Home Rule for municipalities. In numerous decisions the Supreme Court of Ohio has clearly indicated that under the power authorized in Section 3 of Article XVIII a municipality may adopt provisions in conflict with the general law with reference to civil service matters as long as the provision made in the charter complies with the requirement of Section 10 of Article XV of the Constitution and does not conflict with any other provisions of the Constitution. See *State ex rel. Graves*, 90 O. S., 311, also *Hile v. Cleveland*, 118 O. S., 105. The following is quoted from the syllabus of the opinion last above mentioned:

“Section 96 of the charter of the city of Cleveland, which provides that one seeking a promotion or appointment in the city civil service shall pass a competitive civil service examination ‘unless he shall have served with fidelity for at least two years immediately preceding in a similar position under the city,’ does not contravene Section 10, Article XV, of the Ohio Constitution, but is in full accord therewith, and authorizes promotions and appointments of persons in the civil service of the city without civil service competitive examination, who have previously so served under the city.”

Also, the following is quoted from the court’s opinion in said case:

“The claim of plaintiff in error that the appointment was illegal because not made as required by Sections 486-1 to 486-31, General Code, is completely met and answered by the decision of this court in the case of *State ex rel. Lentz et al., Civil Service Commission v. Edwards*, 90

Ohio St., 305, 107 N. E., 768, and cases therein cited, in which this court construed Section 3, Article XVIII, of the Constitution, with reference to the powers thereby conferred upon cities. That decision clearly held that power such as exercised in the instant case was conferred upon the city by Section 3, Article XVIII, of the Constitution. This court has several times since approved and followed that decision."

From the foregoing, it must be concluded that the language of the amended bill in no wise violates any of the provisions of the Constitution. In the event a charter city adopts provisions different from the general law upon the subject of civil service the general law will yield to such municipal regulation. It further is my opinion that there is no apparent conflict between Sections 486-17a and 486-17b or any other provisions of the civil service law. Section 486-17a provides for the tenure of office and the removal for certain specific causes. Section 486-17b, provides for layoffs in the police and fire departments for causes other than those mentioned in Section 486-17a. It is believed that said sections may be clearly harmonized and easily applied, which is the test of whether or not the sections are in conflict. In this connection, it might be pointed out that there is a well known rule of construction, to the effect that in the absence of other things, indicating a different intent, an inconsistent provision which is later in its position in the act, will control over a section occupying a former position.

In view of the foregoing, it is my opinion that amended House Bill No. 250 does not violate any provisions of the constitution. It is my further opinion that Section 486-17b is not in conflict with Section 486-17a, or any other provisions of the civil service laws. It follows of course, that the amended bill will not interfere with the home rule legislation in charter cities upon the subject.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3031.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN WYANDOT COUNTY, OHIO.

COLUMBUS, OHIO, March 9, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3032.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, March 9, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*