

No. 67 (112 O. L. 430), the filing of such application constitutes a proceeding which is pending within the meaning of Section 26 of the General Code of Ohio so that in all instances where it is necessary to acquire right of way for a road improvement it is the duty of the board of county commissioners to proceed under the provisions of former Section 1201, General Code, to acquire the requisite right of way."

In that instance the application for state aid was held to make the proceeding one that was pending so as to render inapplicable the sections of House Bill No. 67, and it was held that the commissioners should proceed under the provisions of former Section 1201 of the General Code. From your statement of fact I assume that this is the section under which the commissioners acted in the case you cite. Quite obviously their proceedings had progressed much farther than in the case covered by the opinion to which I have referred.

I am enclosing herewith a copy of Opinion No. 2110, a perusal of which will disclose to you the reasons for the conclusion set forth in the syllabus above quoted.

Since Section 1201 of the Code as it formerly read has application, where the proceedings are pending, and since in this instance there can be no question about the pendency of such proceedings, I have no hesitancy in saying that those portions of such section that pertain to appeal are still in force and effect so far as this proceeding is concerned. This is especially true in view of the fact that Section 26 of the Code specifically provides that "when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions or proceedings, unless so expressed", and no such expression is found in the Norton-Edwards act.

I am accordingly of the opinion that, where proceedings for the improvement of an inter-county highway were instituted and the county commissioners have proceeded to determine the amount of compensation for land appropriated, together with damages to the residue, prior to January 2, 1928, the effective date of the Norton-Edwards act, such proceedings may be completed in the manner prescribed by Section 1201 of the Code prior to its amendment, including the proceedings on appeal to the Probate Court.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2276.

POLITICAL ACTIVITY—TRUSTEES OF FIREMEN'S AND POLICE RELIEF FUNDS—MAY ORGANIZE TO FURTHER AMENDMENTS TO STATUTES INVOLVING THEIR WORK.

SYLLABUS:

*Where the trustees of firemen's pension funds and of police relief funds effect an organization for the purpose of furthering amendments of the statutes under which they function, and where members of police and fire departments join such organization, such action is not such political activity as constitutes taking part in politics within the purview of Section 486-23, General Code.*

COLUMBUS, OHIO, June 25, 1928.

HON. GEORGE H. BENDER, *Chairman, Senate Fees and Salaries Committee, Cleveland Heights, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion which reads as follows:

"Members of police and firemen's pension boards, operating under the State Law, have organized for the sole purpose of amending sections of the statutes under which they function.

They have asked members of the various police and fire departments of the state to join them in an effort to amend the laws and to crystalize public sentiment in favor of such changes. There has been some criticism, I understand, of this undertaking, and the charge has been made that these men are engaged in political activity.

As the chairman of the Fees and Salaries Committee of the Ohio Senate, I would like to have a ruling from you on the question of political activity. What constitutes political activity? Inasmuch as these men are confining their activity entirely to the subject of changing a law which vitally affects their welfare, can this effort be labeled as political activity, and are they subject to suspension or dismissal on such a premise?"

The section of the Code pertinent to your inquiry is Section 486-23, which provides:

"No officer, employe or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution or payment from any officer, employe or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; *nor shall any officer or employe in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.*" (Italics the writer's.)

The above section has been considered by this department on a number of occasions and it has been held that, under the inhibition upon taking part in politics, an employe in the classified civil service may not be a candidate at a primary or general election without becoming subject to removal, Annual Report of the Attorney General, 1914, Vol. I, page 509, Opinions, Attorney General, 1916, Vol. I, page 375, Opinions No. 902, rendered under date of August 22, 1927, and Opinion No. 2060, rendered under date of May 4, 1928; that such employe may not act as a member of an executive committee of a political party, Annual Report of the Attorney General, 1914, Vol. II, page 1213; and that the provision applies to temporary appointees as well as permanent appointees, Opinions, Attorney General, 1920, Vol. I, page 491. It was also held in an opinion of this department found in Opinions, Attorney General, 1916, Vol. II, page 1955, that Section 486-23, General Code, prohibited the making of political speeches by an employe in the classified civil service.

Section 486-23, supra, specifically prohibits any officer or employe in the classified civil service of the state, the several counties, cities or city school districts from taking part in politics other than to vote as he pleases and to express freely his political opinions. In order to determine the limitations placed by this section on

the activities of such officers and employes, it becomes necessary to consider and determine the meaning of the word "politics."

The term "politics" is defined in Webster's New International Dictionary as:

"1. The science and art of government; the science dealing with the organization, regulation, and administration of a state, in both its external and internal affairs; \* \* \*

2. The theory or practice of managing or directing the affairs of public policy, or of political parties; hence, political affairs, principles, convictions, opinions, sympathies or the like; \* \* \* ."

Bouvier's Law Dictionary defines "politics" as:

"Everything that concerns the government of the country."

"Politics" is defined in 31 Cyc. 909, as:

"In its true original meaning, a term which comprehends everything that concerns the government of the country."

In its most comprehensive sense the term "politics" is probably broad enough to cover the particular activity referred to in your communication. However, I do not believe that the Legislature in enacting Section 486-23, General Code, intended to include therein every activity which by any stretch of the imagination might be termed taking a part in politics. The evil aimed at in the enactment of the civil service law and which it was designed to correct, was the political patronage incident to the employment or appointment of the thousands of employes in the service of the state, the counties, cities and city school districts and to secure to the state and the other sub-divisions mentioned, efficient service without regard to party affiliation.

Reverting to the language of Section 486-23, supra, it will be observed that that section forbids persons in the classified civil service to solicit or receive assessments, subscriptions or contributions for any political party or candidate and further forbids any person to solicit any such contribution from any person in the classified civil service and then follows the inhibition upon taking part in politics. This section is penal in its nature and hence must be strictly construed. It is not only the right but the duty of every individual to take an active interest in the government of the nation and his state, county and municipality, a duty which is too often neglected, and while the Legislature undoubtedly has the right to place restrictions on the activities of employes in the classified civil service, those limitations for the violation of which the penalty of removal is provided, must be strictly construed. Reading the section as a whole and in the light of the purpose of the civil service law I am inclined to the opinion that taking part in politics must be limited to those activities designed to further party interests, or to further the election or defeat of a candidate.

In your communication you speak of "members of police and firemen's pension boards." I assume that this has reference to the trustees of the firemen's pension funds and trustees of the police relief funds mentioned in Sections 4600 and 4616, General Code, respectively.

In view of what has been said above, it is my opinion that where the trustees of firemen's pension funds and of police relief funds effect an organization for the

purpose of furthering amendments of the statutes under which they function, and where members of police and fire departments join such organization, such action is not such political activity as constitutes taking part in politics within the purview of Section 486-23, General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2277.

ROADS—COUNTY COMMISSIONERS—MAY IMPROVE STATE HIGHWAY OUTSIDE MUNICIPALITY AND ASSESS CITY LANDS WITHIN LIMITATION—CANNOT REPAIR CITY STREETS WITH COUNTY FUNDS IF NOT PART OF A COUNTY ROAD.

**SYLLABUS:**

1. *Where a state highway is being improved outside of a municipality, the board of county commissioners may, under the provisions of Section 1214, General Code, assess property located within said municipality, for the improvement of said highway, even though no part of said improvement extends into or through said municipality, provided the property against which the assessments are made is located within either one-half mile, or within one, or one and one-half miles of either side of such improvement, according to the benefits.*

2. *A board of county commissioners is unauthorized to repair a street in a municipality with general road funds of the county, or the county's portion of the gasoline excise tax fund, other than a county road extending into or through a municipal corporation or a part of a county road and a city or village street extending into or through a municipal corporation and forming a continuous road improvement, even though such street becomes out of repair by the use of the county's trucks thereon.*

COLUMBUS, OHIO, June 25, 1928.

HON. FRANK L. MYERS, *Prosecuting Attorney, Mt Gilead, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date reading as follows:

“May I have an opinion from you concerning the following questions:

1. Where a state highway, which does not extend into or through a municipal corporation and does not constitute an extension of an improved inter-county highway or main market road and lies wholly outside the circuits of municipal corporation, but within three-fourths of a mile of such municipal corporation, is improved and the plan of assessment is made upon all property within one (1) mile from either side of said improved road as provided by law, and no action having been taken by the council of the said municipal corporation for such improvement or assessment for said highway,—

(Question) May property located within the limits of such municipality be assessed by the county commissioners for such improvement so located outside said municipality?