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COUNTY DOG WARDEN—SALARY MAY BE REDUCED ALTHOUGH
UNDER CIVIL SERVICE.

SYLLABUS:

The county commissioners can reduce the pay of a county dog warden who is in the classified service of the county, providing the reduction in pay is made in good faith and not for improper motives.

COLUMBUS, OHIO, February 14, 1933.

HON. GRACE FERN HECK, *Prosecuting Attorney, Urbana, Ohio.*

DEAR MADAM:—This will acknowledge your letter of recent date which reads as follows:

“On December 5, 1932, the board of county commissioners of Cham-paign County appointed a dog warden from the list certified by the Civil Service Commission. On January 1st, 1933, the board cut his compensa-tion to \$900.00 as a part of its general economy program. The dog warden contends that it cannot so cut his salary.

General Code Section 5652-7 provides that county commissioners shall appoint or employ a dog warden and deputies to such number, and for such periods of time, *and at such compensation*, as such county com-missioners shall deem necessary to enforce the provision of the General Code relative to licensing dogs,—etc.

Does the placing of the position of dog warden under the classified civil service take away from the county commissioners the power of lowering the compensation of dog warden which they have by virtue of General Code Section 5652-7?”

Your inquiry raises the question as to whether the county commissioners can reduce the salary of a county dog warden who is in the classified service of the county.

In the Opinions of the Attorney General for 1932, Opinion No. 4460, it was held that:

“It is the mandatory duty of the board of county commissioners to appoint a dog warden from the list certified by the Civil Service Com-mission of the State of Ohio for such position.”

Section 5652-7, General Code, in so far as pertinent, reads as follows:

“County commissioners shall appoint or employ a county dog warden and deputies to such number, for such periods of time, and at such com-pensation, as such county commissioners shall deem necessary to enforce the provisions of the General Code relative to the licensing of dogs, the impounding and destruction of unlicensed dogs, and the payment of com-pensation for damages to live stock inflicted by dogs.”

By virtue of the provisions of that statute, it is the duty of the county commissioners to appoint and employ a county dog warden at such compensation as they, the county commissioners, deem necessary in order to enforce the dog registration law (sections 5652 to 5653, inclusive). Since the legislature has granted to the county commissioners the authority to fix the compensation to be paid a county dog warden, it follows that they also have the implied power to reduce the salary of a county dog warden at any time during his course of employment, unless there are statutory inhibitions against the exercise of that right. There is no express statutory objection to the power of the county commissioners to reduce the compensation of a county dog warden contained in either the civil service law (sections 486-1 to 486-31, inclusive) or the dog registration law. In other words, there is no provision in either the civil service law or the dog registration law which provides that the compensation of a county dog warden or his deputies in the classified service of a county shall not be increased or diminished during the course of their employment.

The only statutes in the civil service law which relate to the question of reduction in pay of employes in the classified service of the state or county are section 486-7, sub-paragraph 6, and section 486-17. Section 486-7, sub-paragraph 6, reads:

“The commission shall,

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Sixth: Hear appeals from the decisions of appointing officers of persons in the classified service, who have been reduced in pay or position, laid off, suspended, discharged or discriminated against by such appointing authority;”

Section 486-17 provides:

“No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against by an appointing officer for religious or political reasons or affiliations. In all cases of reduction, lay-off or suspension of an employe or subordinate, whether appointed for a definite term or otherwise, the appointing authority shall furnish such employe or subordinate with a copy of the order of lay-off, reduction or suspension and his reasons for the same, and give such employe or subordinate a reasonable time in which to make and file an explanation. Such order together with the explanation, if any, of the subordinate shall be filed with the commission. Nothing in this act contained shall limit the power of an appointing officer to suspend without pay, for purposes of discipline, an employe or subordinate for a reasonable period, not exceeding thirty days; provided, however, that successive suspensions shall not be allowed, and provided further that the provisions of this section shall not apply to temporary and exceptional appointments made under the authority of section 486-14 of the General Code.”

The provisions of section 486-7, sub-paragraph 6, and section 486-17 regulate and restrict the power of the appointing authority in reducing the compensation of employes in the classified service but do not prohibit the appointing authority from exercising that right.

In Opinions of the Attorney General for 1917, page 2122, the then Attorney General held, in the second paragraph of the syllabus, that:

“The heads of departments may reduce the salary of an employe in the classified civil service whose position does not fall within any of the groups for which the legislature has established salary schedules, provided such reduction be not made for any of the improper motives prohibited by the civil service law.”

To the same effect is the case of *State, ex rel Wilkins, vs. Merrell*, 10 Abs. 283, wherein it was held that state officers can reduce the salaries of employes in the classified service of the state. Judge Allread, in the course of his opinion, said that:

“We do not doubt that the state officers may in good faith, acting without political or religious prejudice, reduce the salaries of its employes.”

See also 7 O. Jur. 609.

The salary paid to a permanent appointee in the classified service of either the state or the county at the time of his or her appointment creates no vested right in the incumbent of such a position or obligation on the part of the appointing authority that the same salary will be paid in the future. The employment of a person in the classified service of either the state or the county is not a contract, express or implied, on the part of the appointing authorities that the compensation paid at the time of the appointment of such person will continue in the future. Since the county commissioners have the right to determine the compensation to be paid the county dog warden, it may reduce the salary of such employe even though he is in the classified service of the county, providing the same is made in good faith by the county commissioners.

Specifically answering your inquiry, I am of the opinion that the county commissioners can reduce the pay of a county dog warden who is in the classified service of the county, providing the reduction in pay is made in good faith and not for improper motives.

Respectfully,

JOHN W. BRICKER,

Attorney General.

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VILLAGE STREET COMMISSIONER — A PUBLIC OFFICER — SALARY
MAY NOT BE PAID FROM MOTOR VEHICLE LICENSE TAX OR
GASOLINE TAX.

SYLLABUS:

1. *A street commissioner in a village is a public officer with a fixed term and with duties fixed by law.*

2. *The compensation of a street commissioner in a village, when fixed by council as provided by section 4219, General Code, should be paid from the general fund of the village, and no part of such compensation may lawfully be paid*