

955.

BONDS—VILLAGE OF QUAKER CITY, GUERNSEY COUNTY,
\$4,800.00.

COLUMBUS, OHIO, July 28, 1939.

Retirement Board, School Employes Retirement System, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the Village of Quaker City, Guernsey
County, Ohio, \$4,800.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of water-works bonds in the aggregate amount of \$5,500, dated September 1, 1934, and bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which the above bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said village.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

956.

AMENDED SUBSTITUTE HOUSE BILL 91, SECTION 3, PARAGRAPH 7, 93RD GENERAL ASSEMBLY—VALID EXERCISE LEGISLATIVE AUTHORITY — PAYROLL—POSITIONS — SHOULD BE APPROVED— STATISTICAL DEPARTMENT, CENTRAL CLEARING OFFICE—RECORDS, PERSONS IN COUNTY GRANTED POOR RELIEF OR ANY PUBLIC ASSISTANCE.

SYLLABUS:

Paragraph 7 of Section 3 of Amended Substitute House Bill No. 91 of the Ninety-third General Assembly is a valid exercise of legislative

authority and the payroll for persons appointed to positions pursuant thereto should be approved as provided by law.

COLUMBUS, OHIO, July 28, 1939.

HON. CARL W. SMITH, *Chairman, Civil Service Commission, Columbus, Ohio.*

DEAR SIR: This will acknowledge your recent letter wherein you inquire as follows:

"We are in receipt of the following inquiry from the Cleveland Civil Service Commission, upon which we respectfully request your official opinion:

'There has been created, in the office of the County Commissioners, a Statistical Department, in accordance with House Bill No. 91, passed February 1, 1939, and approved by the Governor February 8, 1939. Paragraph 7 of Section 3 of this bill provides that the County Commissioners may appoint assistants who shall be exempt from the provisions of Sections 486-1 to 486-31, both inclusive, of the General Code. The Commissioners of the County of Cuyahoga have appointed four typists in accordance with this bill and have presented the payroll for our approval.

'As there is some question in the minds of the Cleveland Civil Service Commission as to the validity of these sections, they have directed that you be requested to render an opinion on this matter for our guidance.'

Your letter does not show upon what ground the doubt of the validity of the pertinent section of Amended Substitute House Bill No. 91 arises, but I assume that you question the propriety of such legislation under the constitutional provision of Ohio governing civil service. Section 10 of Article XV of the Constitution of Ohio reads as follows:

"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."

Paragraph 7 of Section 3 of Amended Substitute House Bill No. 91 of the Ninety-third General Assembly, to which you refer, reads as follows:

"7. There shall be created in each county a central clearing

office for the purpose of keeping records of all persons in the county to whom such poor relief or any public assistance whatsoever has been granted. Such records shall set forth the kind and amount of relief or public assistance granted to each person as well as any other information required by the director of public welfare; provided, however, that the foregoing provisions requiring the establishment of a central clearing office shall not apply to a county wherein like records are now maintained by either a public or private agency. The county commissioners shall have authority to appoint the necessary assistants in the county clearing office created under the provisions of this section. Such assistants shall be exempt from the provisions of sections 486-1 to 486-31, both inclusive, of the General Code."

Sections 486-1 to 486-31, inclusive, of the General Code of Ohio, referred to in the last quoted section, relate to the definition of civil service, classifications, appointments, tenure of office, dismissals and like provisions of the general law pertaining to civil service which ordinarily prevail in most public employment.

In the case of *Ellis vs. Urner*, 125 O. S., 246, the court was considering House Bill No. 196, Eighty-eighth General Assembly, which provided in part, in regard to the Municipal Court of Cincinnati, as follows:

"* * *

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* * *

The assistant clerk, the chief deputy clerks, all of the deputy clerks, the bailiff, all of the deputy bailiffs, and the stenographers, official stenographers, interpreters, statistical clerks, probation officers and any and all other employees of said court shall be in the unclassified service as that term is used in the statutes and laws relating to civil service and no civil service commission shall have any jurisdiction or supervision over their appointment, qualifications, activities, tenure or removal.

* * *

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* * *"

The court came to the conclusion that the act was a proper exercise of legislative powers and not violative of Section 10 of Article XV of the Ohio Constitution in the following words:

"The next inquiry is, Is there a violation of Section 10 of Article XV of the Constitution, which reads as follows: '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.'

The last sentence of the section above quoted, providing that 'laws shall be passed providing for the enforcement of this provision,' indicates that the act is not self-executing, and unless laws were passed by the General Assembly this provision of the Constitution would not be effective.

The legislature having seen fit to provide by House Bill No. 196 that these officials in question shall be in the unclassified service, such action on the part of the legislature is within its constitutional power and is a valid enactment."

The conclusion of the court is stated as follows:

"Being empowered by the Constitution to pass laws touching appointments and promotions in the civil service of the state, the act of the legislature in so doing is not unconstitutional."

In the case of State, ex rel., vs. Green, 11 O. L. A., 167, the Court of Appeals for Cuyahoga County had before it a taxpayer's action to enjoin the Civil Service Commission and the County Auditor from certifying the payroll and subsequently paying the salary of blind relief clerks appointed under Section 2968, General Code, which reads as follows:

"The board of county commissioners may in their discretion appoint such clerks as they deem necessary for the purpose of investigating the qualifications, disability and needs of any person who has heretofore been placed on the blind relief list * * * Such clerks shall be known as blind relief clerks and shall serve for such length of time only as said county commissioners prescribe and may be discharged by said commission at any time."

The court in this case held such clerks to be in the unclassified service and refused to grant the injunction asked. It should be noted that the positions considered in the last quoted case are markedly similar to those positions here considered.

Again, in the case of State, ex rel. Myers, v. Blake, 121 O. S., 511, the court was passing upon the right of the legislature to place "assistants," as that word is used in paragraph (a), subsection 8 of Section 486-8, General Code, within the unclassified service. As stated by the court at page 514, the question was "* * *, does paragraph (a), subsection 8, Section 486-8, General Code, contravene Section 10, Article XV, of the Constitution of Ohio?" The court remarked in approaching the question that "An examination of the debates of the Ohio Constitutional Convention, vol. 2, page 1378, indicates that the practical operation of this article was to be left to the Legislature to carry into effect

by the enactment of proper laws." The conclusion of the court was that the act of the legislature in placing assistants as above in the unclassified civil service "is not inconsistent with constitutional requirements."

From the cases above cited and without extended discussion, it is my opinion that the following conclusions are evident:

1. The constitutional requirement (Section 10, Article XV of the Ohio Constitution) is not self-executing.

2. It was left to the legislature by proper laws to place civil service in Ohio into practical operation.

3. It is within the authority of the legislature to place particular positions within the classified or unclassified divisions of the civil service as their discretion and the nature of the positions would dictate.

I therefore conclude and it is my opinion that paragraph 7 of Section 3 of Amended Substitute House Bill No. 91 of the Ninety-third General Assembly is a valid exercise of legislative authority and that the payroll for persons appointed to positions pursuant thereto should be approved as provided by law.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

957.

CONTRACT — STATE WITH H. W. HOLT, CONSTRUCTION AND COMPLETION, VAN BUREN LAKE, ALLEN TOWNSHIP, HANCOCK COUNTY.

COLUMBUS, OHIO, July 28, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a contract between the State of Ohio, acting through you as Director of the Department of Public Works for the Department of Agriculture, Division of Conservation, and H. W. Holt, of Columbus, Ohio, for the construction and completion of Van Buren Lake, Allen Township, Hancock County, Ohio, according to the drawings and specifications on file in the office of the Auditor of State. This contract calls for an expenditure of \$18,718.91.

You have submitted the following papers and documents in this connection: Contract encumbrance record No. 32; tabulation of bids; notice to bidders; proof of publication; recommendations of Don Waters, Commissioner, Division of Conservation and Natural Resources; Controlling