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MINE EXAMINING BOARD—NO AUTHORITY TO GIVE PROMOTIONAL EXAMINATIONS FOR MINE SAFETY INSPECTORS—SECTION 486-7a, 486-7b, 486-7c, 486-7d AND 898-18 G. C.

**SYLLABUS:**

Under Section 486-7a, 486-7b, 486-7c and 486-7d and Section 898-18, General Code, there are no provisions for the Mine Examining Board to give promotional examinations for Mine Safety Inspectors.

Columbus, Ohio, July 9, 1951

Hon. H. J. Dusz, Chairman, Mine Examining Board  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

"Under Section 898-17 of the General Code of Ohio, there was created in the Division of Mines of the Department of Industrial Relations, a board known as the Mine Examining Board. Some of the duties of the board are to give examinations for appointment of deputy mine inspectors. (Section 898-19), also examination for promotion of deputy mine inspectors (Section 898-18.)

"Section 898-18 was rewritten into Amended Substitute House Bill No. 382, providing for standardization of positions, titles, etc.; however, Section 486-7c, Pay Range No. 27, Class No. 7020, H. B. 382, provides for automatic yearly increases in salary with no provision for promotional examination.

"Under Section 898-18, the Mine Examining Board established regulations for promotion of mine inspectors.

"On January 5, 6, 7, 1949, Mr. H. R. and Mr. I. J. were given the examination for promotion to first class mine inspector, with base pay of \$3600 per year, which with statutory raises, gave Mr. R. \$377.22 per month and Mr. J. \$364.22 per month.

"This was properly certified to the Civil Service Commission on January 13, 1949.

"However, Section 486-7a of H. B. 382 sets up salaries according to the monthly salary received on July 31, 1948, which date was prior to the date of the raise for the above-mentioned men. This has resulted in a considerable cut in salary for Mr. R. and Mr. J.

"The Mine Examining Board would like an opinion on the following two questions:

"(1) What is the salary status of Mr. R. and Mr. J.?"

"(2) Under the present law is it necessary for the Mine Examining Board to give an examination for promotion of deputy mine inspectors (now called mine safety inspectors)."

Your first question is answered by the provisions of Section 486-7a,

General Code, as enacted by the 98th General Assembly, and prior to its recent amendment. As applied to the two men in question, that section provided in part as follows :

“\* \* \* As soon as possible after the effective date of this act, and, in no event later than January 1, 1950, the state civil service commission shall prepare specifications descriptive of the duties, responsibilities and desirable qualifications of each of the above classifications and shall allocate each present position, office or employment, paid in whole or in part by the state of Ohio, to the appropriate class of positions, offices and employments among those set forth above on the basis of the duties, responsibilities, qualifications and requirements of such positions, offices or employments in conformity with the report of the public administration service. \* \* \*

“As soon as the positions, offices and employments are allocated as aforesaid, the salaries and wages of the employees holding said positions, offices and employments shall be adjusted to the salary and wage ranges set forth in General Code Section 486-7b, and the civil service commission in adjusting the salaries and wages in conformity with this act shall use as a basis, the gross salary or wage paid to the employe on July 31, 1948, or on the date of his employment if employed thereafter, and subject to the provisions set forth in paragraphs (a), (b) and (c) of this section. The new salary and wage schedules herein provided for shall become effective on January 1, 1950.”

I note that the statute set up the position of 7020 Mine Safety Inspector, in pay range 27. That range provides for salaries from \$330.00 to \$400.00 per month. It was the duty of the Civil Service Commission to install these men in their appropriate pay range at the pay step which most nearly corresponded to the pay they were receiving on July 31, 1948. This I presume the Commission did. These men have since become eligible for the automatic increase provided by Section 486-7b9, General Code, and the cost of living increase provided by Section 486-7d, General Code, as those sections were amended by Substitute House Bill No. 450 of the 99th General Assembly. They may have become eligible for the length of service increase provided by Section 486-7a4, General Code, as so amended, depending upon their total time spent in state service.

Your second question presents the question of whether it is now necessary for your Board to give promotional examinations for mine inspectors.

In answer to this question, I direct your attention to two changes in

the law effected by the 98th General Assembly, which, I believe, are dispositive of the issue. Prior to 1949, Section 898-18, General Code, provided in part as follows:

“The board shall, within ninety (90) days after its organization, establish two separate classifications for deputy mine inspectors, to-wit:

“(1) That of first class deputy mine inspector who shall receive a salary of \$3,600.00 per annum.

“(2) That of second class deputy mine inspector who shall receive a salary of from \$2,800.00 to \$3,200.00 per annum.”

House Bill No. 382 of the 98th General Assembly, which enacted the new classification law, also amended Section 898-18 so as to omit the above provisions. That same bill also provided, as pointed out above, that there should be one grade of Mine Safety Inspector. To my mind, this indicates clearly that the General Assembly intended to abolish the two existing grades of mine inspector and to create one grade which would be subject to the general civil service law.

It is true that certain provisions were left in Section 898-18 which, standing alone and taken out of context, might indicate that it was still the duty of your Board to give promotional examinations. However, it is my opinion that these provisions represent oversights on the part of the legislative draftsman, and in so far as they conflict with the provisions of House Bill No. 382, they are repealed by that Act.

I also direct your attention to the provisions of Section 898-17, General Code, before and after its amendment. As originally enacted, that section provided in part as follows:

“\* \* \* In addition to the powers and duties heretofore imposed on said mine examining board by this act, said board shall have full power: \* \* \*

“(2) To employ such experts and advisors and such secretarial, clerical, stenographic and other employes as may be deemed necessary and to fix their compensation.”

When this section was amended by House Bill No. 382 of the 98th General Assembly, the last clause relating to the fixing of compensation was omitted. In my opinion this indicates clearly an intention to remove

from your Board the power to fix salaries at rates other than those provided by the Civil Service Laws.

Accordingly, in specific answer to your question, you are advised that under Sections 486-7a, 486-7b, 486-7c and 486-7d and Section 898-18, General Code, there are no provisions for the Mine Examining Board to give promotional examinations for Mine Safety Inspectors.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General