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## UNCLASSIFIED CIVIL SERVICE, STATE OF OHIO:

1. BOARD OF REVIEW OF BUREAU OF UNEMPLOYMENT COMPENSATION — MAY APPOINT TWO SECRETARIES, ASSISTANTS OR CLERKS AND ONE PERSONAL STENOGRAPHER.
2. EACH BOARD MEMBER MAY APPOINT PRIVATE SECRETARY.
3. REFEREE COMES WITHIN PURVIEW OF "ASSISTANT" — SECTIONS 486-8(a)8, 1346-3 GENERAL CODE.

## SYLLABUS:

1. *Under the provisions of Section 486-8(a)8, General Code, the Board of Review of the Bureau of Unemployment Compensation may appoint two secretaries, assistants or clerks and one personal stenographer who shall be in the unclassified civil service of the State of Ohio.*

2. *In addition to the three appointments permitted the Board of Review of the Bureau of Unemployment Compensation by Section 486-8(a)8, General Code, by the express provisions of Section 1346-3, General Code, each member of said Board may appoint a private secretary to hold office at his pleasure.*

3. *The position of referee of the Board of Review of the Bureau of Unemployment Compensation comes within the purview of "assistant" as that term is used in Section 486-8(a)8, General Code.*

Columbus, Ohio, December 15, 1941.

Mr. Frank C. Manak, Chairman, Board of Review,  
Bureau of Unemployment Compensation, Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion wherein you propound the following questions:

“Does the Board of Review of the Bureau of Unemployment Compensation have the right to the exemptions from the classified Civil Service granted by Section 486-8(a)8, General Code?”

If so, does this right to the exemptions exist in addition to the exemptions specifically provided for in Section 1346-3, General Code, which reads in part as follows: ‘Notwithstanding any provisions of the Civil Service laws of this state, each member of the board may appoint a private secretary to hold office at his pleasure.’?”

Assuming the answers to the two foregoing questions are in the affirmative, does the right to the exemptions provided for in Section 486-8(a)8 extend to the position of Referee of the Board of Review?”

The pertinent portions of Section 486-8, General Code, provide as follows:

“The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required in this act. \* \* \*

8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.”

In view of this section, you inquire whether the exemptions therein allowed to boards and commissions are available to the Board of Review of the Bureau of Unemployment Compensation, hereinafter referred to as the Board.

The identical question was considered by this office in Opinion No. 2657, Opinions of the Attorney General for 1940, Volume II, page 788, addressed to the Administrator of the Bureau of Unemployment Compensation. The second branch of the syllabus of that opinion reads as follows:

“ \* \* \* the Board of Review of the Bureau of Unem-

ployment Compensation may not claim and be granted the exemptions from the classified civil service provided by Section 486-8(a)8, General Code.”

The rationale of this conclusion was that the Board possessed no general power of appointment and, consequently, was not a board “authorized by law to appoint such secretary, assistant or clerk and stenographer”.

Since the rendition of this opinion, however, the Ninety-Fourth General Assembly, in Amended Substitute Senate Bill No. 187, effective October 1, 1941, amended Section 1346-3, General Code, with respect to the Board’s power of appointment by adding the following to said section:

“The board of review, subject to the civil service laws of the state of Ohio, shall have power to employ such reporters, stenographers, clerical aid and other help as shall be requisite to the discharge of the duties of the board and to determine the salaries and duties of such employes; \* \* \*.”

It should also be noted that by said amendment the following language was deleted from the section as it then existed:

“The administrator shall furnish the board and its referees and secretary with such offices, reporters, clerical aids and other help and supplies as shall be requisite to the discharge of the duties of the board, utilizing those already provided for his main office or branch offices wherever possible.”

By this amendment it appears clear that the Legislature took from the Administrator the power and duty to furnish the Board with the necessary personnel and gave the Board the general power of appointment by which it might select its own help. This being true, it is at once apparent that the conclusion of my former opinion is no longer controlling.

By reason of this recent amendment to Section 1346-3, supra, it is my opinion that the Board has a general power of appointment and consequently may avail itself of the three exemptions permitted by Section 486-8(a)8, supra.

Section 1346-3, supra, was further amended in said Senate Bill No. 187 by the addition of the following:

“Notwithstanding any provisions of the civil service laws of this state, each member of the Board may appoint a private secretary to hold office at his pleasure.”

This language prompts your second question which is whether, in addition to the three exemptions permitted by Section 486-8(a)8, supra, three private secretaries may also be employed in the unclassified service.

You will observe that the three exemptions under Section 486-8(a)8, supra, may be exercised by the Board as such. The appointment of a private secretary, however, is within the discretion and at the pleasure of each of the three members of the Board. In clear unambiguous language the Legislature has made provision for the appointment of private secretaries, notwithstanding any provisions of the civil service law to the contrary.

I have no hesitancy, therefore, in concluding that each member of the Board may appoint a private secretary to serve at his pleasure and such appointments may be made in the unclassified service in addition to the exemptions permitted the Board as a whole by Section 486-8(a)8, supra.

We come now to your final question concerning the use of the exemptions permitted by Section 486-8(a)8, supra. Specifically, you inquire if such exemptions extend to the position of referee of the Board. With respect to appointments of referees, Section 1346-3, General Code, contains the following provision:

“The Board, subject to the civil service laws of this state and to the approval of the governor, shall appoint and fix the compensation of such referees as may be deemed necessary, with power to take testimony in any appeals coming before the board. The board and its referees shall, in the performance of their duties, exercise all the powers provided by Section 1345-24.”

Section 1345-24, General Code, referred to in the section just quoted, contains grants of power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance and testimony of witnesses and production of books, etc. By Section 1346-3, supra, such powers are vested in both the Board and its referees.

With these preliminaries in mind, let us again examine Section

486-8(a)8, supra, to ascertain the type of positions that may be exempted thereunder. This section speaks of "secretaries", "assistants", "clerks" and "personal stenographers". For obvious reasons our considerations may be limited to "assistants".

In Opinion No. 1236, Opinions of the Attorney General for 1916, Volume I, page 201, the then Attorney General made the following observations at page 202 concerning "assistant":

"It must be observed in the first place that the term 'assistant', as used in this statute, cannot be limited to those persons who are so named and denominated by statutory law because such persons are practically all excepted under other provisions of said section 486-8. Obviously, therefore, the legislature intended it to apply in a more general way, but to give you a definition that would furnish a test in every instance would be an impossibility. This is so because in a certain sense and to some extent all subordinate officers are assistants of their principals. As is very pertinently observed in the case of *State v. Longfellow*, 69 S.W. 596:

'The word assistant is susceptible of a considerable variety of meanings to be made definite in each case by the aid of the context, the circumstances and other recognized materials of interpretation.'

In view of these considerations I am of the opinion that the term as used in this statute must be interpreted so as to harmonize with the general spirit and purpose of the civil service law as well as the general character of those positions which, by other provisions of the law, are exempted and excepted from the classified service. If we so construe this term it then must be held to mean something more than a person who aids or assists his principal. It must be one who not only aids and assists his principal, but whose relation to his principal, because of the duties of his position, is one of a confidential or fiduciary character. In other words, the position of assistant as here contemplated means a position of trust and confidence, the duties of which involve, to some extent at least, the responsibility of the principal. When these qualifications are added to the ordinary acceptance of the term it brings it, in my judgment, in harmony with the other provisions of the law relating to exempted positions, and is consistent with the general purpose of the civil service law.

Therefore, adopting this view of the matter, I must advise that the term 'assistant', as used in said section, may include any officer, regardless of his title, who aids and assists his principal in the discharge and performance of duties, which involve the responsibility of the principal, and are of a confidential and fiduciary character."

In Opinion No. 371, Opinions of the Attorney General for 1917, Volume II, page 1007, it was said at page 1008:

“An assistant is one who assists, and an assistant of an officer is one who would assist such officer in the prosecution of the duties of his office. In like manner, an assistant of a board would be one who assists such board in the prosecution of its lawful duties. The assistant may not possess all the powers or have all the authority or fulfill all the requirements of his principal. This is especially true of a board, as no one but the board, properly speaking, can do the things done by it in the sense or in the manner in which it does them itself. The board acts as a body through its members and by resolutions or motions spread upon its minutes and adopted by a majority of its members in accordance with law and with lawful and proper bylaws. This is true of every organization known as a board, and inasmuch as the statutes permit such board to have an assistant, it follows that the assistant must do different things and act in a different manner from the board itself, which things, however, must be confined to the objects of the existence of the board.”

These expressions were cited and followed in Opinion No. 1298, Opinions of the Attorney General for 1924, Volume I, page 145.

As pointed out in my former opinion (Opinion No. 2657, Opinions of the Attorney General for 1940, *supra*) our Supreme Court in the case of *State, ex rel. Myers v. Blake*, 121 O.S. 511, considered the meaning of “assistant” as used in Section 486-8(a)8, *supra*, and said at pages 516 and 517 as follows:

“The office of chief of the division of boiler inspection being thus within the purview of the department of industrial relations, he was clearly within its jurisdiction and a subordinate of the director thereof. As such chief of the division of boiler inspection, he was an ‘assistant’ to the head of the department, as an agent through whom the duties and purposes of the department were accomplished. The subordinate of one in an official position is necessarily an assistant, looking toward the accomplishment of the common object. We think the term was so used by the Legislature in paragraph (a), subsection 8, Section 486-8, General Code. \* \* \*

We think that the construction given the word ‘assistants’ in the section under consideration is a reasonable one, and within the legislative intent in the passage of the law in question, and that the same is not inconsistent with the constitutional requirements.”

An examination of the above authorities readily reveals that the term “assistant” is susceptible of a number of meanings. In a sense, all

employees are "assistants" to the employer in that they aid and assist in carrying out the powers and duties of the employer. However, for the purposes of this opinion it is not necessary to consider whether such broad definition may properly be ascribed to "assistant". Suffice it to say that referees, as pointed out above, are within the jurisdiction and control of the Board and by law are invested with certain statutory powers granted the Board. Being so, I conclude they are "assistants" to the Board as agents through whom the functions of the Board are performed.

Specifically answering your questions, it is my opinion that:

1. Under the provisions of Section 486-8(a)8, supra, the Board of Review of the Bureau of Unemployment Compensation may appoint two secretaries, assistants or clerks and one personal stenographer who shall be in the unclassified civil service of the State of Ohio.

2. In addition to the three appointments permitted the Board of Review of the Bureau of Unemployment Compensation by Section 486-8(a)8, supra, by the express provisions of Section 1346-3, supra, each member of said Board may appoint a private secretary to hold office at his pleasure.

3. The position of referee of the Board of Review of the Bureau of Unemployment Compensation comes within the purview of "assistant" as that term is used in Section 486-8(a)8, supra.

Respectfully,

THOMAS J. HERBERT,

Attorney General.