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EMPLOYEES OF CITY HOSPITAL—HOSPITAL CONVEYED TO COUNTY—CLASSIFIED SERVICE EMPLOYEES—TO CONTINUE IN SAME POSITIONS AT SAME SALARY—MAY RETAIN TENURE AND ALL RIGHTS AS CLASSIFIED EMPLOYEES—CONSENT OF STATE CIVIL SERVICE COMMISSION—SECTION 486-16 GC—ARTICLE XIV, SECTION 10, CONSTITUTION OF OHIO.

SYLLABUS:

By virtue of the provision of Section 10 of Article XIV of the Ohio Constitution and the provisions of the laws relating to civil service, particularly Section 486-16, General Code, the employes of a city hospital, who are in the classified service, and who upon the conveyance of such hospital to a county, are to continue in the same positions and at the same salary, may with the consent of the State Civil Service Commission retain their tenure and all rights incident thereto, as classified employes, in the service of the county.

Columbus, Ohio, February 5, 1953

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

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

“Pursuant to an agreement entered into between the City of Cleveland and the Board of County Commissioners of Cuyahoga County, the City of Cleveland on August 1, 1952 will transfer and convey to the County its Infirmary and Chronic Hospital. These institutions will be operated by the Board of Trustees of the Cuyahoga County Hospital in conjunction with a new County Hospital now being constructed and soon to be completed. The Board of Trustees of the Cuyahoga County Hospital was appointed pursuant to the provisions of Section 3131 G. C.

“The agreement above referred to provides that the County will ‘recognize and preserve the Civil Service status and rights of all persons presently employed by the City in the operation of said premises and buildings so conveyed (City Infirmary and Chronic Hospital).’ There are some forty employees at the City Infirmary and Chronic Hospital under City Civil Service that will be involved in the transfer of these institutions to the County. Some of these people have extensive periods of service, ranging

from two to forty years. The transfer will not involve any change in the present duties of these employees, the only difference being that they will be employees of the County instead of the City.

“The State and City Civil Service Commissions are of the view that these employees cannot be transferred to the County Civil Service. In other words, they feel that when the transfer is made, these employees would lose their present Civil Service status. This would mean that they would have to be given provisional appointments, take an examination and finally be certified as Civil Service employees of Cuyahoga County. The City officials now in charge of these institutions, The Board of Trustees of Cuyahoga County Hospital and the City Civil Service Commission are in favor of recognizing and transferring the present Civil Service status and rights of these employees, if this is legally possible.

“Specifically, therefore, the question upon which your opinion is respectfully requested is as follows :

“Under the circumstances above set forth, may the employees in question who are in the classified Civil Service of the City be transferred to the classified Civil Service of the County with the consent of the State and City Civil Service Commissions?”

Section 10, of Article XIV, 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.”

This is a mandate which is binding upon the state, the several counties, and cities. Pursuant to its command, the General Assembly has enacted Section 486-1 et seq., which outline the machinery and proceedings whereby appointments and promotions are to be made. By Section 486-1, General Code, it is provided :

“1. The term ‘civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof. * * *”

By Section 486-8, General Code, the civil service of the state, and the several counties, cities and city school districts, is divided into the classified

and unclassified service. I do not consider it necessary to analyze this section to determine what positions are in the classified service. Your letter states that some forty employes of the city infirmary and chronic hospital are to be transferred, with no change in their duties, and as I understand, many of them are in the classified service. Section 486-2, General Code, provides as follows :

“On and after the taking effect of this act (G.C. §§486-1 to 486-31), appointments to and promotions in the civil service of the state, the several counties, cities and city school districts thereof, shall be made only according to merit and fitness to be ascertained as far as practicable by competitive examination; and thereafter no person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employe in the civil service of the state, the several counties, cities and city school districts thereof, in any manner or by any means other than those prescribed in this act or by the rules of the state or municipal civil service commissions within their respective jurisdictions as herein provided.”

Section 486-10 et seq., General Code, provides that all applicants for places and positions in the classified service, shall be subject to examination, and the sections which follow relate to the examinations, the preparation of an eligible list, and the appointment from such eligible list of one of the three candidates standing highest on the eligible list for the class or grade to which the position belongs. There are also provisions for provisional appointments when there is no eligible list available.

Section 486-15, General Code, relates to promotions in the classified service, and in this connection, I direct attention to the provisions of the Constitution which I have already quoted, to the effect that not only appointments but *promotions* are to be based on fitness, to be ascertained as far as practicable by competitive examination. Section 486-15 provides in part as follows :

“Vacancies in positions in the classified service shall be filled in so far as practicable by promotions. The commission shall provide in its rules for keeping a record of efficiency for each employe in the classified service, and for making promotions in the classified service on the basis of merit, to be ascertained as far as practicable by promotional examinations, by conduct and capacity in office, *and by seniority in service*; and shall provide that vacancies shall be filled by promotion in all cases where, in the judgment of the commission, it shall be for the best interest of the service so to fill

such vacancies. All examinations for promotions shall be competitive. *In promotional examinations efficiency and seniority in service shall form a part of the maximum mark attainable in such examination.* In all cases where vacancies are to be filled by promotion, the commission shall certify to the appointing authority only the name of the person having the highest rating. * * *

(Emphasis added.)

I call particular attention to that provision of the section just quoted, to the effect that "efficiency *and seniority* in service" shall form a part of the maximum mark attainable in each examination. Section 486-17a, General Code, makes provision for the tenure in office of employees who have attained a position in the classified service by the processes aforesaid, in the state, the counties, the cities and city school districts. This section reads in part as follows:

"The tenure of every officer, employe or subordinate in the classified service of the state, the counties, cities and city school districts thereof, holding a position under the provisions of this act, shall be during good behavior and efficient service; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office. * * *

It is to be observed that one who has secured an appointment in the classified service, shall be entitled to hold that position "under the provisions of this act during good behavior and efficient service", and the statute goes on to enumerate the only causes for which he may be removed. It may be assumed that in case the state or any of the subdivisions coming within the purview of civil service, should abolish a department entirely, the employes therein who are in the classified service, might lose their positions and be required to seek employment elsewhere, but there is nothing in this section to suggest that the transfer of an existing and continuing institution under control of one of these governmental bodies to the ownership and supervision of another, would have the effect of throwing these classified employees out, and subjecting them to the necessity of starting from the beginning, with examination, certification and new appointment, in order that they might retain the precise position and perform the same work for which they have qualified and which they have been doing for many years. The unfairness of that suggestion is illustrated by the state-

ment in your communication, that some of these employees have held their position and presumably have done satisfactory work for a period of forty years, others doubtless for long, but lesser periods. If their tenure is to be abolished, under the circumstances suggested, then they must subject themselves to an examination in competition with younger people, who presumably have made special preparation for the examination, and may attain a higher grade, but who are wholly without the experience and competency attained by long service.

Another section of the civil service act which appears to me to have a decisive bearing on the question submitted is Section 486-16, General Code. In so far as pertinent, it reads:

“With the consent of the commission, a person holding an office or position in the classified service may be transferred to a similar position in another *office, department or institution having the same pay and similar duties*; but no transfer shall be made from an office or position in one class to an office or position in another class, nor shall a person be transferred to an office or position for original entrance to which there is required by this act, or the rules adopted pursuant thereto, an examination involving essential tests or qualifications or carrying a salary different from or higher than those required for original entrance to an office or position held by such person. * * *” (Emphasis added.)

The words, “another office, department or institution” are not limited by any language in the statute to offices, etc., within a particular subdivision, but are equally applicable to offices, departments and institutions in all those political subdivisions, which as I have shown, are gathered together and brought within the scope of the “civil service.” The only qualification is that the positions in these other offices, departments and institutions from and to which transfers of classified employes may be made, have the “same pay and similar duties.”

The obvious purpose of this provision is not merely to authorize an employe to be let out of one office and to be employed in another, but rather to transfer “a person holding an office or position in the *classified service*,” carrying with him his tenure, his efficiency record and his seniority credit. The statute would be meaningless and useless unless that were its purpose. The only condition is the consent of the civil service commission.

The only discussion of this section, providing for transfer, which I have been able to find is in Opinion No. 853, Opinions of the Attorney

General for 1917, page 2302, where it was held, that the civil service commission cannot permit transfers from the county service to the state service or vice versa. Practically the entire argument and reason is embodied in this statement:

“A transfer from the county service to the state service would intrude one into the latter service who had not competed with all those entitled to seek the same position, but who had only competed against those in the same one of the eighty-eight counties in which he took the examination.”

I do not consider that opinion in any way binding as applied to the different state of facts involved in your inquiry.

I would call attention again to the idea which is carried both in the Constitution and in the statutes, that not only appointments but *promotions* are to be governed by the civil service procedure, and the statutory provision that in an examination for promotion “seniority in service shall form a part of the maximum mark obtainable.” If the employes to which you refer are to be considered as dismissed and required to start from the beginning, and be subjected to an examination as new employes, then what becomes of their record of seniority? Plainly, it would be lost and could have no part in their obtaining promotion to better positions.

Taking it all in all, it appears to me that it would be necessary to resort to a highly technical construction of the law and disregard of its basic purpose in order to crowd these employes out and reduce them to the necessity of starting anew. Such a procedure would not be conducive to good public service and efficiency attained by long service.

I am not unmindful of the fact that the legislature has provided by Sections 486-19 and 486-19a, General Code, for a municipal civil service commission, to have the management of civil service procedure with respect to municipal employees and employees of city school districts. However, there is nothing in these provisions that gives the municipal civil service commission any authority to depart from the idea and purpose of the Constitution either as to appointments or promotions. I also do not overlook the fact that by virtue of the Home Rule Amendment to the Constitution, embraced in Article XVIII, municipalities may set up their own organizations for the administration of civil service. The Supreme Court has recognized this right in several cases, among others, *State, ex rel. Lentz v. Edwards*, 90 Ohio St., 305, and *Hile v. Cleveland*, 118 Ohio St.,

99. This right, however, under home rule to provide by the terms of a charter for the administration of civil service with respect to municipal employes does not in any way authorize any departure from the underlying principle and purpose laid down in the Constitution. It only relates to the machinery and procedure by which this central purpose may be carried out. The court in the Edwards case says:

“As long as the provisions made in the charter of any municipality with reference to its civil service comply with the requirement of Section 10 of Article XV, and do not conflict with any other provisions of the constitution, they are valid and under the cases referred to discontinue the general law on the subject as to that municipality.”

The same principle is recognized in the case of *Hile v. Cleveland*, supra.

It occurs to me that under the rather broad rule-making power of the state civil service commission as well as that of the city civil service commission, a rule might be adopted by one or both designed to preserve the civil service status of these employees in the case of the complete transfer of an institution conducted by the city, to the county. That, together with the consent and agreement on the part of the city and county officials to which you refer, ought to remove any question as to the regularity of such a proceeding.

Specifically answering your question, it is my opinion that by virtue of the provision of Section 10 of Article XIV of the Ohio Constitution and the provisions of the laws relating to civil service, particularly Section 486-16, General Code, the employes of a city hospital, who are in the classified service, and who upon the conveyance of such hospital to a county, are to continue in the same positions and at the same salary, may with the consent of the State Civil Service Commission retain their tenure and all rights incident thereto, as classified employes, in the service of the county.

Respectfully,

C. WILLIAM O'NEILL

Attorney General