

1951.

## APPROVAL, BONDS OF MADISON COUNTY, \$11,130.00, ROAD IMPROVEMENTS.

COLUMBUS, OHIO, November 8, 1924.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

1952.

COUNTY RECORDER—APPOINTMENT OF DEPUTIES—SECTION 2754  
CONSTRUED.*SYLLABUS:*

*Under the provisions of paragraph 9 of Section 486-8 G. C. and Section 2754 as amended in 109 O. L., 210, deputies duly appointed and qualified to act for and on behalf of the recorder are in the unclassified service.*

COLUMBUS, OHIO, November 11, 1924.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

Dear Sir:—

In your recent communication you request my opinion as follows:

“The county recorder of Cuyahoga County has made inquiry of this office as to whether under Section 2754 G. C. as amended 109 Ohio Laws, page 210, he can appoint as deputy recorder all of his employes, and if not all, what employes can he so appoint.

There are a large number of typists and ordinary clerks employed in this office and also quite a number who have important branches of the recorder's activities under their management, as for instance, the registered title, chattel mortgage, comparing, etc., each of which might create liability on the part of the recorder.

Having in mind the provisions of the civil service law, this inquiry presents a difficult question which arises in Cuyahoga County, and which probably could not arise in a county where the entire force of the county recorder consists of one or two persons.

Will you please give your opinion as to the effect of Section 2754 under these circumstances?”

Section 2754 of the General Code, as amended in 109 Ohio Laws, 210, provides:

“The county recorder may appoint a deputy or deputies approved by the court of common pleas to aid him in the performance of his duties. Such appointment or removal shall be in writing and filed with the county treas-

urer. The recorder and his sureties shall be responsible for his deputy or deputies' neglect of duty or misconduct in office. Before entering upon the discharge of his duty, the deputy or deputies shall take an oath of office."

Upon examination it will be observed that the amended law provides for the appointment of "deputies" whereas the original law provided for the appointment of a "deputy." There are other minor changes noted, but for the purpose of this opinion it is believed that the change above referred to is all that needs consideration at this time.

In connection with your inquiry it becomes necessary to consider the provisions of Section 486-8 G. C., which is a part of the civil service law. This section undertakes to enumerate the positions of the state and its subdivisions which shall be in the unclassified service. Among those so placed in the unclassified service are set forth in paragraph 9 of said section, which reads:

"The deputies of elective or principal executive officers authorized by law to act for and in the place of their principals and holding a fiduciary relation to such principals."

From the provisions of said paragraph 9 it appears to be clear that deputies authorized by law to act for and in the place of their principals, when said principals are elective officers, are in the unclassified service.

The question now presents itself as to what constitutes a deputy within the meaning of that section. It may be helpful to consider the provisions of Section 9 of the General Code, which provides, in substance, that a deputy when qualified, may perform all and singular the duties of his principal. It has been an established policy of this state over a long period to regard a deputy as one authorized to act on behalf and for his principal. In other words, generally speaking, a deputy may perform any act that his principal may perform, in the absence of such principal, or under his direction. In the use of the term "deputy" under the civil service law, undoubtedly the legislative intent was that the term should imply the same meaning and construction as heretofore given by the legislature in Section 9. It is also clear that in the amendment of Section 2754 it was the intention of the legislature to clothe the recorder with power to appoint, with the approval of the Court of Common Pleas, as many deputies as are necessary to properly conduct the business of the office.

In view of this conclusion, it must follow that deputies appointed under the provisions of Section 2754 must be those who are authorized and empowered to act for and in behalf of the recorder. If such appointee be properly appointed and clothed with such power he is exempt from the classified service. If an appointee is not so appointed and not so authorized to act, then he is in the classified service. In other words, in order to be in the unclassified service under such circumstances it must be a valid appointment for the purposes contemplated by the appointment of deputies and not a subterfuge to circumvent the civil service law.

Respectfully,

C. C. CRABBE,

*Attorney-General.*