

unencumbered balances in the appropriation account sufficient in amount to pay the rental under this lease for the months of July, August and September, 1939. This is a sufficient compliance with the provisions of section 2288-2, General Code of Ohio. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

898.

BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—EXAMINERS—WITHIN CLASSIFIED SERVICE, STATE OF OHIO—CIVIL SERVICE—APPOINTMENT MUST CONFORM TO LAWS GOVERNING CLASSIFIED SERVICE.

SYLLABUS:

Examiners in the Bureau of Inspection and Supervision of Public Offices are within the classified civil service of the state of Ohio and must, therefore, be appointed in conformity with the laws governing the classified civil service of the state of Ohio.

COLUMBUS, OHIO, July 19, 1939.

HONORABLE JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: Your request for an opinion relative to the status of state examiners in the Bureau of Inspection and Supervision of Public Offices, which has been previously acknowledged, puts before me the question of the meaning of the following words in Section 276 of the General Code: "The chief inspector and supervisor shall determine the grade of each examiner and assistant state examiner," and more particularly your right to appoint and classify such examiners in a manner which would constitute an exception to appointment of employes under the classified civil service.

Though not directly stated in your letter, your position appears to be taken on the following bases: (1) the duties of such examiners are such that they become "deputies" under Section 486-8(a), clause 9, of the General Code and consequently are not within the classified civil service; (2) the words of Section 276, above quoted, operate to remove the positions concerned from the classified civil service.

Section 276, General Code, in so far as is pertinent, reads as follows:

"The chief inspector and supervisor shall appoint such assistants as he deems necessary, who shall be known as state

examiners, and assistant state examiners. State examiners and assistant state examiners shall receive the following compensation for each day necessarily employed by them in the discharge of such duties as may be assigned to them and for each day absent on leave, not exceeding twelve days in each year: grade one A examiners, fifteen dollars; grade one B examiners, fourteen dollars; grade one C examiners, thirteen dollars; grade two A examiners, twelve dollars; grade two B examiners, eleven dollars; grade two C examiners, ten dollars; grade three A examiners, nine dollars; grade three B examiners, eight dollars; grade one A assistant examiners, seven and one-half dollars; grade one B assistant examiners, seven dollars; grade one C assistant examiners, six and one-half dollars; grade two A assistant examiners, six dollars; grade two B assistant examiners, five and one-half dollars; grade two C assistant examiners, five dollars. The chief inspector and supervisor shall determine the grade of each state examiner and assistant state examiner. Each state examiner and assistant state examiner shall be allowed mileage at the legal rate of railroad transportation when traveling on official business under orders of the chief inspector and supervisor or the deputy inspectors and supervisors. * * *

Substantially the same question you present was asked of the then Attorney General and answered in Opinions of the Attorney General for 1914, No. 694. The syllabus of such opinion reads as follows:

“The state examiners appointed by the bureau of inspection and supervision of public offices are within the classified service and subject to examination, unless the civil service commission shall determine that as a matter of fact it is impracticable to determine the merit and fitness of state examiners by competitive examination.”

Likewise in Opinion No. 49 of Opinions of the Attorney General for 1915, the same question was determined in the same manner. The syllabus of the last mentioned opinion reads:

“It cannot be held, as a matter of law, that the state examiners of the bureau of inspection and supervision of public offices are within the unclassified service.”

Considering first the question of whether or not such examiners, by reason of their duties, are “deputies” within the meaning of Section 486-8(a), clause 9, and therefore not within the classified civil service, I find that Section 276, *supra*, as it now exists, imposes upon such exam-

iners the same duties they were performing at the time the above opinions were given. The test applied to reach the results of such opinions is the same now as then existed. In the absence of new factors, which in no way appear, no reason is apparent to me why the conclusions of the above opinions should be disturbed.

I am not diverted from this conclusion by the cases to which you direct my attention: State of Ohio ex rel. vs. Smith, 101 O. S., 203, and State, ex rel. Day, vs. Emmons, 126 O. S., 19. In each of these cases special facts were presented to the court which led the court to believe that in these individual cases it was impractical to determine the qualification for the positions involved by examination. The court in announcing such decisions did not inaugurate any new policy or rule of law. It merely reaffirmed the rule applied in the above opinions, in which I concur.

In the case of State, ex rel. Emmons, vs. Guckenberger, 131 O. S., 466, the Supreme Court was considering the question of "deputies" as used in Section 486-8(a), clause 9, supra, as applied to employes of a county auditor. A reading of that case will illustrate that the court, in construing the term "deputies," laid down such a strict rule as would preclude the opinion that the state examiners in the Bureau of Inspection and Supervision of Public Offices are such deputies.

Briefly stated, two factors determine whether or not employes are entitled to the status of deputies. They are—(1) the authority and ability of such employes to perform all and singular the acts of their principals, and (2) an intimate personal fiduciary relationship with such principals.

Upon application of this test to the state examiners in the Bureau of Inspection and Supervision of Public Offices, it becomes obvious that they are not such deputies as would fall within the provisions of Section 486-8(a), clause 9. It definitely cannot be claimed that each examiner can perform all and singular the acts that may be performed by you as auditor, and it appears equally obvious that they may not perform all and singular the acts of the state auditor, as chief inspector of the Bureau of Inspection and Supervision of Public Offices. This last statement is given force by a reading of Section 285, General Code, and that section will illustrate that before such examiners may perform certain acts they shall first receive the approval of yourself, as chief inspector. The part of Section 285 which so provides reads:

"* * * The chief inspector, and, *subject to his approval*, each deputy inspector and each state examiner, shall likewise have authority to employ such experts * * *." (Italics ours.)

I cannot come to the conclusion, therefore, that any showing has been made requiring a departure from the opinions of the former attorneys general which conclude that examiners here concerned are, by their

duties and relationship to you, as auditor or as chief inspector, brought within the meaning of the word "deputies," as used in Section 486-8(a), clause 9, of the General Code, and therefore not within the classified civil service.

Coming now to the meaning of the words in Section 276, General Code, "the chief inspector and supervisor shall determine the grade of each state examiner and assistant state examiner," I find that whatever meaning may be intended thereby, I cannot ascribe to such words the meaning advanced by you, which, as before stated, is that such words remove the examiners from the usual means of appointment in the classified civil service.

Standing alone, the words appear to grant to you authority without qualification to classify employes within the department concerned. It might well be that, viewed in the light of constitutional limitations concerning civil service, these words are vitiated, but such reference becomes unnecessary in the light of subsequent legislative enactments which have the same effect.

I am naturally influenced, however, in these considerations by the fact that the constitution of the state of Ohio provides (Article XV, § 10) that:

Appointments and promotions in the civil service of the state, * * * shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. * * *",

and that, in obedience to such constitutional direction, the legislature of Ohio has passed general laws for competitive examination for state employment and for classification of state employes.

In House Bill No. 674, 93rd General Assembly, filed with the Secretary of State June 1, 1939, and which is the current appropriations bill, on page 154, under section heading 10, I find the following words which have been included in each appropriation bill for many years past:

"So much of the appropriation made for personal service as pertains to the compensation of employes in the following groups and grades of the *classified civil service*, * * * may be expended only in accordance with the classification and rules of the state civil service commission at the following rates or annual salaries in the respective groups and grades * * *." (Italics the writer's.)

Thereafter are enumerated the examiners and assistant examiners of the Bureau of Inspection and Supervision of Public Offices.

Two important facts stand out on a reading of the above quoted section: First, the section contains a legislative declaration that such

examiners are within the classified service and, second, the compensation for such persons must be in accord with the classification and rules of the civil service commission.

It is a rule of law, established and supported by long usage and the pronouncements of the courts, that where statutes or parts of statutes cannot be reconciled, the latest in point of time is of necessity the last expression of legislative will, which would, in the absence of other factors, be controlling. See 37 O. J., p. 400.

The position, therefore, that examiners in the Bureau of Inspection and Supervision of Public Offices are not within the classified civil service in so far as such might be supported by Section 276, General Code, and which, if so viewed, is inconsistent with House Bill 674, supra, and that such examiners may be appointed without the laws governing the classified civil service, becomes untenable.

I therefore conclude, and it is my opinion, that examiners in the Bureau of Inspection and Supervision of Public Offices are within the classified civil service of the state of Ohio and must, therefore, be appointed in conformity with the laws governing the classified civil service of the state of Ohio.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

899.

1. FORFEITED LAND SALE—COURT COSTS—COUNTY LIABLE IN TAX LIEN FORECLOSURE WHERE NO BIDDERS AND LAND FORFEITED TO STATE—SECTION 5744 G.C.—COSTS PAID FROM COUNTY GENERAL FUND—EXCEPTION, FEES TO COUNTY OFFICIALS—SECTION 2983 G.C.
2. HOW PROCEEDS OF SALE APPLIED—SECTION 5757 G.C.—OWNERS OF LAND—COSTS OF PRIOR FORECLOSURE PROCEEDINGS CANNOT BE DEDUCTED—TREASURER, UPON DEMAND, SHALL PAY ANY EXCESS TO OWNERS.

SYLLABUS:

1. *A county is liable for court costs in tax lien foreclosure proceedings where lands are not sold for want of bidders and are thereafter forfeited to the state as provided in section 5744, General Code. These costs may be paid from the county general fund except such portion as constitutes fees charged by county officials which section 2983, General Code, provides shall not be collected from the county by such officers.*

2. *When forfeited lands are sold at forfeited land sales, section 5757, General Code, provides that the proceeds are first to be applied*