

1262.

CIVIL SERVICE COMMISSION—COUNTY COMMISSIONERS—
AUTHORITY TO CERTIFY ASSISTANT CLERKS AND
STENOGRAPHERS.

SYLLABUS:

Under the provisions of Sections 486-8 and 2409, General Code, a board of county commissioners is without authority to certify more than a total of three assistant clerks or stenographers as being in the unclassified list of the county. ff

COLUMBUS, OHIO, October 2, 1937.

The State Civil Service Commission of Ohio, State Office Building, Columbus, Ohio.

GENTLEMEN: I am in receipt of your letter of recent date, which is as follows:

“Under the provisions of Section 486-8-a-8 of the Civil Service Laws of Ohio which grants four personal exemptions to elective state officers, and three personal exemptions to other elective officers, each of the principal appointive executive officers, boards or commissions, it has been the policy of the State Civil Service Commission to grant but three personal exemptions to each of the various boards of county commissioners.

The claim has been definitely advanced that the Board of County Commissioners is entitled to three personal exemptions for each individual member of the board.

Will you kindly inform us relative to this situation at your earliest opportunity?

By direction of the Commission.”

Your question is: Under the above sub-section, has each member of a board of county commissioners three exemptions from the classified service? The case of *State, ex rel Fesler vs. Green, et al*, 40 O. App., 400, is dispositive of your question. In that case a permanent injunction was asked restraining the defendants, the members of the City Civil Service Commission of Cleveland, from certifying to the county auditor the pay roll of the county commissioners containing, among others, nine assistant clerks or stenographers, appointees of the board, as exempt from the classified civil service of the State of Ohio, and to further restrain the county auditor from certifying the pay roll to the county treasurer and the county treasurer from paying the same.

The following is quoted from the opinion of the court:

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The question presented turns upon the construction to be placed upon the wording of that part of the Civil Service Act of the State of Ohio, known as Section 486-8, General Code. That section, or the portion thereof pertinent, reads as follows: '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.'

It is further provided in this same section that the classified service shall comprise all persons in the employ of the several counties not specifically included in the unclassified service. Therefrom it is clear that the employees listed on the county commissioners' pay roll as exempted from classified service are included in the classified service unless specifically included in the unclassified service designated under Section 486-8.

Returning now to a consideration of the statute in question, we are certain that county commissioners are not elective state officers, but as individuals we well recognize that the members of a board of county commissioners are elective officers. Now the statute to this point, we consider, embraces fully the situation which develops in the county offices in the smaller counties of the state, and we appreciate the fact that this number of employees specified by the statute would not be sufficient in a county the size of Cuyahoga, but we feel in an interpretation of the remaining portion of the statute to be construed that such should receive a construction that will not nullify any other plain provision of the statutes, and, considering the proposition as advanced by the commission that the members of the county board of commissioners are each individually entitled to the appointment of a stenographer, and two secretaries or clerks, we are unable to appreciate and understand that the Legislature had any such intention.

It will be noted that in the last portion of the statute quoted the word 'boards' or 'commissions' is used except when it comes to civil service commissions, and then the statute recites, after

the interposition of a comma, 'authorized by law to appoint such secretary, assistant or clerk and stenographer.'

Now we know of no provision of the law that permits a county commissioner in his individual capacity to make an appointment, and, upon turning to Section 2409 of the General Code, we find that it is provided that, if such board finds it necessary for the clerk to devote his entire time to the discharge of the duties of such position, it may appoint a clerk in place of the county auditor, and such necessary assistants to such clerk as the board deems necessary. Such clerks shall perform the duties required by law by the board.

Now it seems plain from this statute that it is the board's power to appoint its clerks and assistants, and not the duty and power of the individual members of the board, and we must keep in mind further the fact that county commissioners have no power other than such as may be given them by express provision of law.

Section 486-8, if strictly construed, might lead to the conclusion that the board of commissioners had no such power of appointment, but we do not believe that the statute considered with other related statutes warrants this court in so determining. It is therefore our conclusion that the board of county commissioners had no right to include a greater number than three as being in the unclassified service; that is to say, that the contention of defendants that the board has power to so certify nine is untrue, and not warranted by the statute, from which it follows that in that respect the injunction will be made perpetual.

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The decision permits but one conclusion—that the three exemptions permitted by the statute are exemptions allowed the board as a whole and not to the individual members thereof.

Respectfully,

HERBERT S. DUFFY,
Attorney General.