

and game protection, preservation and propagation, and in view of the further fact that by virtue of the provisions of Amended Senate Bill No. 369, appropriations have been made for the purpose of carrying out the provisions of Section 1433, supra, it is apparent that the conclusion reached in Opinion 4281, above referred to, is no longer applicable.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1448.

STATE CIVIL SERVICE COMMISSION—MAY NOT QUESTION APPOINTING AUTHORITIES RIGHT TO SUSPEND, ETC.

SYLLABUS:

The State Civil Service Commission does not have the authority to question the action of an appointing authority as a matter of administration to conduct a hearing upon the contention of a suspended employe that such thirty day suspension was not in fact for the purposes of discipline, for the reason that there is no statutory provision for appeal in cases of reduction in pay or position, lay-offs or suspensions.

COLUMBUS, OHIO, November 10, 1937.

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

GENTLEMEN: This will acknowledge receipt of your request for my opinion, which reads as follows:

“Section 486-17 of the General Code of Ohio provides in part that—

‘Nothing in this act contained shall limit the power of an appointing authority to suspend without pay, for purposes of discipline, an employe or subordinate for a reasonable period, not exceeding thirty days; provided, however, that successive suspensions shall not be allowed.’

From long usage and precedent it has been the policy of this Commission to accept the written statement of the appointing authority in the exercise of his administrative duties as Director of the department, that such suspensions were for disciplinary purposes, and to definitely refuse all

requests for appeal under such circumstances.

The appointing authority, who is the head of the department, has the sole discretion of enforcing discipline, and it has been our opinion that in all cases the question of discipline is one to be determined solely by the appointing authority.

We desire to respectfully request your opinion on the following question:

Does the Civil Service Commission have the authority to question the action of an appointing authority as a matter of administration, and to conduct a hearing upon the contention of the suspended employe that such thirty day suspension was not in fact for purposes of discipline?"

It is necessary to review the various sections of the General Code relative to suspensions in the civil service for disciplinary purposes and removal from office.

Section 486-17, General Code, refers to lay-offs, suspensions and reductions in salary, and reads in part as follows:

"Nothing in this act contained shall limit the power of an appointing authority to suspend without pay, for purposes of discipline, an employe or subordinate for a reasonable period, not exceeding thirty days * * *."

Section 486-17a, General Code, refers to removals from office only and appeals from the order of removal, and provides in part as follows:

"Any such employe or subordinate so removed may appeal from the decision or order of such appointing authority to the state or municipal commission, as the case may be, within ten days from and after the date of such removal * * *."

It is to be noted that a limited jurisdiction of appeal was granted by statute to the State or Municipal Civil Service Commission. The statute makes no provision for appeal in cases of reductions in salary, lay-offs or suspensions for disciplinary purposes, and provides specifically, as above, that "nothing in this act shall limit the power of an appointing officer to suspend without pay, for purposes of discipline, an employe or subordinate for a reasonable period."

It is to be noted further that the statute makes express provis-

ion for appeal in cases of removal; that "any such employe or subordinate so removed may appeal from the decision or order of such appointing authority to the state or municipal commission, as the case may be."

The principle of *expressio unius est exclusio alterius* is decisive of this question, if for no other reason. However, in the case of *Curtis, Safety Director, vs. State, ex rel. Morgan*, 108 O. S. 292, it is held in the second branch of the syllabus:

"No appeal lies from the action of the appointing authority except in cases of removal on the grounds set forth in Section 486-17a, General Code."

The case of *Saladin, et al., vs. The State, ex rel. Richey, et al.*, 53 O. App., 334, holds in effect that the State Civil Service law applies to a non-charter city, and that employes who are suspended for disciplinary purposes have no right to appeal from such order of suspension to the Civil Service Commission of the municipality. The first and second branches of the syllabus of this case are as follows:

"1. The state civil service laws regulating the procedure applicable to reductions, suspensions and removal of employes govern the civil service in non-charter municipalities which have not provided rules therefor by ordinance or by adoption by the civil service commission of such municipalities.

2. Employees who are suspended for disciplinary purposes for less than thirty days by the superintendent of the electric light department of a municipality and given a certified notice of the suspension with the reasons therefor, have no right to appeal from such order of suspension to the civil service commission of the municipality. Section 486-17a, General Code, gives a right to appeal only in cases of 'removals.'"

In view of the foregoing, it is my opinion that in a case of suspension of an employe for disciplinary purposes as a matter of administration by an appointing authority, the State Civil Service Commission does not have the authority to conduct a hearing on the appeal of the employe that such suspension was not in fact for the purpose of discipline, because of no statutory provision therefor.

Respectfully,

HERBERT S. DUFFY,

Attorney General.