

1930

OHIO STATE REFORMATORY—THERE MAY NOT BE A SUPERINTENDENT AND AN ACTING SUPERINTENDENT AT SAME TIME—ONLY ONE MAN MAY OCCUPY POSITION OF SUPERINTENDENT OR MANAGING DIRECTOR—CLASSIFIED SERVICE.

SYLLABUS:

There may not be a superintendent and an acting superintendent of the Ohio State Reformatory at the same time. Only one man may occupy the position of superintendent or managing director.

Columbus, Ohio, June 22, 1950

Hon. Carl W. Smith, Chairman, State Civil Service Commission of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion is as follows:

“Under date of January 25, 1949, Judge J. H. Lamneck, Director of the Department of Welfare, wrote our Commission:

‘Subject to your approval and effective February 1st, we are promoting Arthur L. Glatke from the position of Superintendent of the Mansfield Reformatory to Chief of the Division of Corrections, at a base salary of \$6500.00 per year.’

On January 25, 1949, also, Director Lamneck wrote:

‘If your honorable body approves the promotion of Arthur L. Glatke to the position of Chief of the Division of Corrections, which we have requested you to approve this

day, we are asking your approval of George Allarding who is at present Assistant Superintendent of the Mansfield Reformatory to the position of Acting Superintendent of the Mansfield Reformatory at a base salary of \$4800.00 per year, effective February 1, 1949.'

The promotion of Mr. Glattke to Chief of the Division of Corrections, and Mr. Allarding to Acting Superintendent of the Mansfield Reformatory were approved by the State Civil Service Commission on January 31, 1949.

On December 20, 1949, Director Lamneck wrote our Commission :

'Subject to the approval of your honorable body, and effective as of January 1, 1950, we are reinstating and demoting Mr. Arthur L. Glattke, at his request, to his former position of Superintendent of the Ohio State Reformatory at a salary of \$630.00 a month, gross, from which position he was promoted on February 1st, 1949.'

The demotion of Mr. Glattke from the position of Chief of the Division of Corrections and his reinstatement to the position of Superintendent of the Ohio State Reformatory at Mansfield, was approved by the State Civil Service Commission, effective January 1, 1949, and his salary was fixed at \$600.00 a month.

Under date of December 13, 1949, Director Lamneck wrote the Commission :

'Due to the return of Mr. Arthur L. Glattke to his former position of Superintendent of the Mansfield Reformatory, effective as of January 1, 1950, please terminate the designation of Mr. George Allarding as Acting Superintendent of the Mansfield Reformatory effective as of January 1, 1950, and return him to his former position as Assistant Superintendent of the same institution, from which he was granted a leave of absence on February 1, 1949, at a salary of \$420.00 a month, gross.'

The Commission terminated the designation of Mr. Allarding as Acting Superintendent and returned him to the position of Assistant Superintendent as requested.

In the reclassification study Mr. Glattke was classified as Reformatory Superintendent II, in salary range 40, at \$600.00 a month. Mr. Allarding was classified as Reformatory Superintendent I, salary range 34, at \$460.00 a month.

Under date of December 20, 1949, Director Lamneck wrote the Commission :

"Effective January 1, 1950, in connection with Mr. Arthur L. Glattke's duties as Superintendent of the Ohio

State Reformatory, he has been designated as Acting Chief of the Division of Corrections.'

The Commission has deferred action upon this appointment, pending advice from the Attorney General requested in our letter of December 22, 1949.

Since January 1, 1950, Mr. Allarding has been signing communications and appointments as 'Acting Superintendent'. He has also appealed his classification, contending that he should be classified as Reformatory Superintendent II, as is Mr. Glatke, on the grounds that he is doing the duties of that position.

The question is whether there may be a Superintendent and an Acting Superintendent at the same institution."

Section 1842, General Code, provides for the position of Superintendent of the Ohio State Reformatory. That section reads as follows:

"Subject to the provisions of law and the rules and regulations of the department of public welfare, each of the institutions under the jurisdiction of the department shall be under the control and management of a managing officer to be known as a superintendent or by other appropriate title. Such managing officer shall be appointed by the director of the department of public welfare, after consultation with the head of the respective division, and shall be in the classified civil service.

The managing officer, under the director of public welfare, shall have entire executive charge of the institution for which he is appointed, except as otherwise may be provided by law. Subject to civil service rules and regulations he shall select and appoint the necessary employes, and he or the director of the department of public welfare may remove such employes for cause. A report of all appointments, resignations and discharges shall be filed with the department at the close of each month.

The director of public welfare, after conference with the managing officer of each institution and the chief of the division within the department in which such institution is located, shall determine the number of employes to be appointed, and fix their respective salaries and wages, which shall be uniform, as far as possible, for like service."

You will note that Section 1842, General Code, provides for only one superintendent, who is to be appointed by the Director of Public Welfare and who is to be in the classified civil service. The superintendent or managing officer selects and appoints the necessary employes, subject to civil service rules and regulations. There is no provision in this section

for either an assistant superintendent or an acting superintendent. It is therefore necessary to examine the laws relative to civil service.

I assume that Mr. Allarding was appointed Acting Superintendent pursuant to the civil service laws, Section 486-1 to 486-30, inclusive, of the General Code, and that such appointment was provisional or temporary in nature without a competitive examination. Under such circumstances an employe is authorized to hold such provisional or temporary appointment until a permanent appointment is made or until the emergency or vacancy ceases. Upon a permanent appointment or vacancy being filled, the temporary appointment ends.

In the situation you present, the position of superintendent which was formerly vacant has now been filled and as a result it must be said that the temporary position of acting superintendent is abolished. The statute, Section 1842 relative to the position of Superintendent of the Ohio State Reformatory provides for only one superintendent, and it is therefore my opinion that there may not be a superintendent and acting superintendent at the Ohio State Reformatory.

The fact that Mr. Allarding is classified as Reformatory Superintendent I or II does not alter my opinion. The Reclassification Bill of the 98th General Assembly, Section 486-7a et seq., General Code, Amended Substitute House Bill No. 382, is merely an attempt by the legislature to make the titles and salaries of civil service employes uniform. Pursuant to Section 486-7a, General Code, your commission prepares specifications descriptive of the duties, responsibilities and desirable qualifications of the classifications made, and your commission sets forth the basis of the duties, responsibilities, etc., of the position. The fact that there are two types of superintendents provided for in the Reclassification Act does not in any way change the position I have taken. Apparently, your commission has included within the classification of Superintendent-I duties which would permit an assistant superintendent or one qualified such as Mr. Allarding to come within its purview. It is possible that Mr. Allarding would meet the qualifications set out for Superintendent III, and if this is true, I can see no objection to his being classified as such, but as I have stated above, the statute provides for only one superintendent or managing director of the Ohio State Reformatory, and regardless of the classification of an employe such classification does not operate to constitute him the head of a department.

In summary and conclusion it is my opinion that there may not be a superintendent and an acting superintendent of the Ohio State Reformatory at the same time. Only one man may occupy the position of superintendent or managing director.

Respectfully,

HERBERT S. DUFFY,
Attorney General.