

1123.

JUVENILE COURT—EMPLOYEE — CHIEF PROBATION OFFICER—WHERE HE ALSO ACTS AS VISITOR FOR AID TO DEPENDENT CHILDREN—WITHIN UNCLASSIFIED CIVIL SERVICE OF STATE—SECTION 1639-18, G. C.

SYLLABUS:

A person employed within a juvenile court as chief probation officer and who also acts as county visitor for Aid to Dependent Children serves under the provisions of Section 1639-18, Ohio General Code, and is, therefore, within the unclassified civil service of the State of Ohio.

COLUMBUS, OHIO, September 1, 1939.

HON. CARL W. SMITH, *Chairman, Civil Service Commission, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter wherein you inquire as follows:

“We are in receipt of the following inquiry from Judge E. S. Young of Adams County Courts, West Union, Ohio, upon which we respectfully request your opinion:

The new Juvenile Court Code, effective August 19, 1937, known as Section 1639-18, General Code, reads in part as follows:

‘The judge may appoint a chief probation officer, and as many probation officers, stenographers, bailiffs and other employes as may be necessary. Such appointees shall receive such compensation and expenses as the judge shall determine and shall serve during the pleasure of the judge.’

An opinion of the Attorney General, known as No. 1190, dated September 20, 1937, stated that this statute expressly takes out of the classified service the employes and officers mentioned, all of whom must be appointed by the Juvenile Judge and hold their positions subject to the pleasure of the Juvenile Judge.

However, it is the opinion of this Commission that all appointments made by the Juvenile Judge are in the classified service as provided by Section 486-8, sub-paragraph (b) of the General Code, and that the only positions in the unclassified service are those included in sub-paragraph (a) of the same statute.

In the opinion of this Commission, the new Juvenile Court law did not place the positions in the unclassified service, but did fix the tenure as during 'the pleasure of' the Juvenile Judge. In other words, it is our opinion that the method of appointment is as provided by Section 486-13 of the General Code, but that the new law prevails in conflict with Section 486-17-a of the General Code, as to removals.

A chief probation officer in the Juvenile Court of Adams County, Ohio, was permanently appointed from an eligible list resulting from an examination on August 1, 1929, in accordance with the provisions of Section 486-13 of the Civil Service Laws of Ohio.

On January 1, 1939, the same employe was appointed by the Juvenile Court by transfer to the position of Visitor for Aid to Dependent Children, and it appears has been serving jointly as Chief Probation Officer for the Juvenile Court and Visitor for Aid to Dependent Children.

It is the view of the federal agency, known as the State Division of Public Assistance, Department of Public Welfare, that a County Visitor employed in the Division of Aid to Dependent Children is responsible to the County Administrator, who is usually the judge of the Juvenile Court acting as Administrator of the federal program of Aid to Dependent Children in that county. The view of the federal authorities is that the appointing officer of a Visitor for Aid to Dependent Children is the Administrator, who may happen to be the Judge, but in the Division of Aid to Dependent Children, a federal agency, he is actually acting in the capacity of Administrator and not as judge; consequently, the federal authorities hold the opinion that in making an appointment to a position in the Division of Aid to Dependent Children, the Judge is acting as Administrator and not as Juvenile Judge and consequently the tenure of an employe in the Aid for Dependent Children is during good behavior and efficient service as provided by Section 486-17-a to all persons in the classified service and such employes are not employes of the Juvenile Court, subject to the pleasure of the Judge as to tenure as outlined by Section 1639-18, General Code."

The opinion you refer to in your letter of inquiry, No. 1190 of Opinions of the Attorney General for 1937 comes to the conclusion that Section 1639-18, Ohio General Code, referred to in your letter, removes the employes of the juvenile court from the classified civil service and makes their appointments and tenure subject to the will of the juvenile judge. The opinion reasons that Section 1639-18, supra, is in conflict with the general laws relating to civil service and that since the first

mentioned section is clear and unambiguous and susceptible of no construction, it must by implication repeal the general provisions of law in so far as such section might govern the particular positions concerned.

I find support for the conclusion of that opinion in the case of *State, ex rel. vs. Green*, 11 O. L. A., 167, wherein the Court of Appeals of Cuyahoga County was asked to pass upon the validity of Section 2968, Ohio General Code, which reads in part as follows:

“The board of county commissioners may in their discretion appoint such clerks as they deem necessary. * * * Such persons shall serve for such lengths of time only as the board of county commissioners subscribes and may be discharged by said board at any time.”

The court in that case held that such clerks were in the unclassified service. The statute construed in that case is directly comparable to the statute concerning which you now inquire and, no points of differentiation being apparent, the conclusion of that case is equally applicable to the instance you present.

I find, therefore, no reason to disturb the conclusion of the opinion to which you refer and concur in the holding of that opinion.

You present also in your inquiry the fact that the chief probation officer of the juvenile court concerned acts in the dual capacity of probation officer and county visitor in connection with the program of Aid for Dependent Children carried on under the supervision of the Department of Welfare of the State of Ohio and you set forth the view that his appointment as county visitor is not dependent upon Section 1639-18, Ohio General Code, and that, therefore, such person is not taken from the classified service by the terms of Section 1639-18, *supra*.

The provisions dealing with Aid for Dependent Children are found in Sections 1359-31 to 1359-45, inclusive, Ohio General Code. Under Section 1359-31, provision is made for a county administration of the program of Aid for Dependent Children and the county administration is defined in the following words:

“‘County administration’ means the juvenile judge, * * *.
‘Juvenile judge’ means the judge of a juvenile court as defined in Section 1639 of the General Code * * *.”

Subsequent sections provide the means of operating the plan of assistance to dependent children and under Section 1359-35, Ohio General Code, the powers and duties of the Department of Welfare in connection with such plan are set out. In that section the following words are found:

“Unless otherwise required by any such rule or regulation, (of the Department of Welfare) and so far as practicable the

juvenile judge, when acting as the county administrator, shall utilize in the administration of this act the services of officers and employes of the court exercising juvenile jurisdiction.”

(Parenthetical matter the writer's.)

It should be noted that nowhere in the sections (Sections 1359-31 to 1359-45, inclusive, Ohio General Code) is the juvenile judge given a separate appointing power to provide for employes to administer the act. A reading of the whole act dealing with Aid for Dependent Children leads to these conclusions: (1) the county administrator under the act is the juvenile judge; (2) the juvenile judge, in so far as is practicable, shall use juvenile court employes to administer the act; (3) the juvenile judge has been given no separate powers to appoint employes under the act; which conclusions in turn lead finally to the conclusion that it was the intent of the Legislature to add the duties of administering the act to the duties already existing of regular court employes and not to create thereby separate and distinct offices.

It has long been recognized in Ohio that the addition of duties to an office or an employment does not create a new office or a new employment. See 38 O. J., 948; State, ex rel. vs. Power, 109 O. S., 383.

From these considerations, I am of the opinion that a person employed within a juvenile court as chief probation officer and who also acts as county visitor for Aid to Dependent Children serves under the provisions of Section 1639-18, Ohio General Code, and is, therefore, within the unclassified civil service of the State of Ohio.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1124.

COUNTY AGRICULTURAL SOCIETY—FAIRS—WHERE TITLE TO SITE IN BOARD OF COUNTY COMMISSIONERS — CONSENT — JOURNAL ENTRY — PROCEDURE TO MORTGAGE REAL ESTATE — VALUE, APPRAISEMENT, COST, REPAIRS AND IMPROVEMENTS—APPOINTMENT OF APPRAISERS—SECTION 9908 G. C.—LOAN—ASSIGNMENT—SECTIONS 9880, 9880-2, 9887, 9894 G. C.

SYLLABUS:

1. *Where title to the site on which a county agricultural society holds its fairs is in the board of county commissioners, the agricultural society may, with the consent of the board of county commissioners duly entered on their journal, mortgage the real estate so used to an amount not exceeding fifty per cent of its value for the purpose of paying the cost*