Undoubtedly the municipality may purchase stationery and other supplies used in connection with the official business of the civil service commission. In certain types of public employment, it is undoubtedly legitimate to purchase standard text books and also periodicals which enable the public employes to keep abreast of the progress of the particular science or art in which they are engaged. Thus, it is certainly legitimate to subscribe for legal and medical journals for the use of public employes.

It would be unreasonable to assume that the members of a civil service commission must be expert in all of the various lines with respect to which they must give examinations. While Section 486-5, General Code, permits the commission to employ examiners, inspectors, clerks and other assistants to carry out its duties, and such authority comprehends a temporary employment of certain examiners who may be conversant with the particular type of employment, yet I do not believe that this section negatives the right of the commission to secure information with respect to its duties from text books and periodicals.

While the service here in question is not a periodical, yet it furnishes information which may be of service to the commission in conducting its examinations, and I see no reason why the right to subscribe should be denied.

Of course, the commission may not abdicate its functions and turn over the conducting of the examinations to any one. The examination questions furnished, however, will undoubtedly prove useful, and a part or all of them may be adopted as questions of the commission without surrendering the functions of the commission in any way.

It is also true that the public money may not be expended for the purpose of educating public employes. This principle has been announced in many opinions of this office. I do not feel, however, that it has application here.

I am not here passing upon the propriety of the course suggested. There may be reasons which would make the general employment of questions prepared other than by the commission itself undesirable. The thought suggests itself that these questions might perhaps be obtained by candidates for employment before the examinations, or that answers might be available. However that may be, this is a question for the discretion of the commission and, in the absence of an abuse of that discretion, I feel that the expenditure should be treated as legitimate.

In view of the foregoing, it is my opinion that a municipality may lawfully pay a fixed amount per year to the Bureau of Public Personnel Administration for questions furnished in connection with the examination of applicants under the civil service law.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2144.

CIVIL SERVICE—PERSON DRAFTED IN WORLD WAR AND DISCHARGED SIX DAYS LATER FOR PHYSICAL DEFICIENCY NOT ENTITLED TO ADDITIONAL CREDIT IN EXAMINATION.

SYLLABUS:

A person inducted into the military service of the United States by a local draft board on the 27th day of August, 1918, *and discharged from the draft on the 2nd day of September,* 1918, *because of physical deficiency, upon filing such certificate of service and discharge with the civil service commission is not entitled to receive additional*

credits in a regular examination in which he receives a passing grade, as provided in Section 486-10 of the General Code.

COLUMBUS, OHIO, July 23, 1930.

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

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

"We are in receipt of the following inquiry from the Director of Personnel and Civil Service Secretary of the city of Cincinnati, and in view of the fact that it is desirable to have the opinion of the Attorney General on such question, we desire to respectfully request same:

'Will you kindly advise what your procedure would be relative to allowing war service credits to an applicant presenting a "Discharge from Draft" showing no service other than "induction into the service from the jurisdiction of the Local Board on the 27th day of August, 1918, and discharged the 2nd day of September, 1918?" The reasons given for this discharge are "Defects existing prior to draft." (Mitral insufficiency—cardiac hypertrophy). Please advise whether you would allow war credits to an applicant presenting a discharge of this kind.'"

Section 486-10 of the General Code provides in part as follows:

"All applicants for positions and places in the classified service shall be subject to examination which shall be public, and open to all, within certain limitations, to be determined by the commission, as to citizenship, residence, age, sex, experience, health, habits and moral character; provided, however, that any soldier, sailor, marine, member of the army nurse corps or Red Cross nurse who has served in the army, navy, or hospital service of the United States in the war of the rebellion, the war with Spain, or the war with the central powers of Europe between the dates of April 6th, 1917, and November 11th, 1918, who has been honorably discharged therefrom and is a resident of Ohio, may file with the civil service commission a certificate of service and honorable discharge, whereupon he shall receive additional credit given in the regular examination in which he receives a passing grade of twenty per cent of his total grade. * * * "

You will note that this section provides, in so far as it is applicable to your inquiry, that any soldier who has served in the army of the United States in the war with the central powers of Europe between the dates of April 6, 1917, and November 11, 1918, who has been honorably discharged therefrom and is a resident of Ohio, is entitled to receive additional credits. The question arises, therefore, whether or not the applicant under the facts set forth in your letter is a soldier who served in the army and who had been discharged therefrom.

The act of May 18, 1917, Sections 10221, et seq. (Barnes Federal Code), known as "An Act to authorize the President to increase temporarily the military establishment of the United States," authorized the President in his discretion to create and establish local draft boards and such boards were given the power within their respective jurisdiction to hear and determine, subject to review, all questions of exemptions under the act and all questions of or claims for including or discharging individuals from the selective draft. This act also authorized the president to make rules and regulations for the issuance of certificates of exemption or partial or limited

exemptions and for a system to exclude and discharge individuals from the selective draft; and also authorized the President to exclude or discharge from the selective draft persons found to be physically or morally deficient. The facts as submitted by you in your letter show that the applicant was inducted into the service by a local draft board. However, it does not appear whether or not he was discharged by a local draft board or at some mobilization camp. This fact, however, is not material to a determination of your question, since it appears that he was discharged six days after he was inducted into the service, and Section 166 of the selective service regulations prescribed by the President under the authority vested in him by the terms of the act of May 18, 1917, provided that all men inducted into the service shall at the mobilization camp be finally accepted or rejected within fifteen days after the date of the registrant's induction into the service. So that, regardless of whether or not he was discharged at a mobilization camp or discharged by a draft board because of physical disability within six days after he was inducted into the service, he was not discharged from the army but was discharged from the draft. In other words, his discharge was actually an exemption from military service because of physical disability. The applicant was not enrolled in the army of the United States but was merely called for service depending upon his passing a physical examination, which he failed to do and therefore never served in the army of the United States or was discharged therefrom.

In the case of *Bannister* vs. *Soldiers' Bonus Board,* 112 Atl., p. 422, the court had under consideration a statute which enumerated certain classes of persons who were entitled to receive a bonus from the state of Rhode Island, and provided as follows:

> "Sec. 2. To each commissioned officer, enlisted man, field clerk, and army and navy nurse, duly recognized as such by the war or navy department, who was mustered into the Federal Service and reported for active duty on or after April 6, 1917, and prior to November 11, 1918. * * * "

The petitioner in the Bannister case was selected for immediate military service and inducted into the military service of the United States on the 13th day of March, 1918, and was ordered to report at the State House at Providence, R. I., on the 18th day of March, 1918, for military service, and in compliance with this order the petitioner presented himself and was sent to camp at Fort Sam Houston, Texas, where, on the 28th day of March, 1918, he was discharged from the military service of the United States by reason of absence of teeth—"insufficient for mastication." The court held, as shown by the syllabus, that Public Laws 1920, chapter 1832, §2, does not grant a bonus to a man who under the Selective Draft Law was inducted by his local board into the military service of the United States during the war with Germany, but was promptly rejected at a cantonment as unfit for military service, and who was never, therefore, mustered into the service. The court in the course of its opinion said:

> "It would seem that the word 'muster' may be used accurately in describing the gathering together of men by military order at the various camps for the purpose of selecting and later training those who on examination appear to possess the necessary qualifications. But in our opinion a man has not been 'mustered into the federal service' within the meaning of Section 2 of said Chapter 1832 until he has passed muster, or, in other words, until he has been finally selected as a person fit for service, and actually enrolled in the service. It does not appear that the petitioner's name was ever placed on any muster roll of the army, but, on the contrary, it does appear that on the

tenth day following the day he reported at the State House he was rejected as unfit for service and discharged, not from the army but from the draft."

The court further says:

> "The petitioner never had an opportunity to report for active duty. His experience with the draft never brought him to the stage where it was possible for the army or navy department to order him to attack the enemy or endure other perils of war. He was not called for active duty. His name was selected by lot as were the names of all other persons who were called by the draft, and he, like the others, were ordered to report to a camp for final examination to determine his fitness for active duty. Had the petitioner successfully passed the physical examination, he probably would have been enrolled as a member of the army and assigned to active duty in a training camp."

The facts in the case of the applicant before me are very similar to those in the Bannister case, and while the court held in that case that the petitioner was not mustered into the federal service, or enrolled into the service, it supports the view expressed by me that the applicant in the case before me had not served in the army, for if such an individual is not mustered into the service he certainly is not one who had served in the army and honorably discharged therefrom within the meaning of Section 486-10, General Code.

In view of the discussion herein, and in specific answer to your inquiry, I am of the opinion that a person inducted into the service by a local draft board on the 27th day of August and discharged from the draft on the 2nd day of September, 1918, because of physical deficiency, upon filing such certificate of service and discharge with the civil service commission is not entitled to receive additional credits in a regular examination in which he receives a passing grade, as provided in Section 486-10 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2145.

SCHOOL DISTRICT—ISSUING BONDS FOR SCHOOLHOUSES—COMBINED PROCEEDS MAY NOT BE USED ON SCHOOL HOUSE IN MERGED DISTRICT.

SYLLABUS:

When two adjoining school districts have each issued and sold bonds for the purpose of constructing a schoolhouse in each district, the proceeds of such issues may not be used for the construction of one large schoolhouse to serve the entire territory involved as a result of the two districts having become one district.

COLUMBUS, OHIO, July 23, 1930.

HON. I. B. STEELE, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—Your letter of recent date is as follows: