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1. CIVIL SERVICE COMMISSION—RECLASSIFICATION PROCEEDINGS—TWO DISTINCT FUNCTIONS—(1) ALLOCATION OR^U PARTICULAR POSITION, OFFICE OR EMPLOYMENT TO ONE OF CLASSIFICATIONS LISTED—SECTION 143.09 RC—(2) RECLASSIFIED POSITION OR A POSITION CONSISTENT WITH INDIVIDUAL'S RECLASSIFIED STATUS.
2. ADMINISTRATIVE PROCEDURE ACT—PROVISIONS NOT APPLICABLE TO ACTIONS OF COMMISSION IN ALLOCATION OF PARTICULAR POSITIONS, OFFICES OR EMPLOYMENTS—CLASSIFICATIONS LISTED—NOTICE OF HEARING—SPECIAL PROVISIONS, SECTION 143.09, PARAGRAPH E RC.
3. NOTICE AND HEARING—APPLICABLE WHERE PROPOSED ACTION OF COMMISSION WOULD ADVERSELY AFFECT EITHER AN EMPLOYEE OR APPOINTING AUTHORITY—UPWARD CLASSIFICATION—RECLASSIFICATION BY COMMISSION ON ITS OWN INITIATIVE—DOWNWARD RECLASSIFICATION—REQUIREMENT—NOTICE AND OPPORTUNITY FOR HEARING

SYLLABUS:

1. The civil service commission in reclassification proceedings under the provisions of Section 143.09, Revised Code, is concerned with two distinct functions, i.e., (1) the allocation of a particular position, office or employment to one of the classifications listed in such section, and (2) the reclassification and assignment of an individual incumbent to such position as reclassified, or to a position consistent with such individual's reclassified status.

2. The provisions of the administrative procedure act are not applicable to actions of the civil service commission in the allocation of particular positions, offices or employments in the state service to one of the classifications listed in Section 143.09, Revised Code; nor are the provisions of such act relating to notice and hearing by an administrative agency applicable with respect to hearings by the commission in proceedings to reclassify and reassign individual incumbents of reclassified positions, special provision for such notice and hearing having been made in paragraph (E) of Section 143.09, Revised Code.

3. The provision for notice and hearing by the commission, as set out in paragraph (E) of Section 143.09, Revised Code, is applicable only in cases where the proposed action of the commission would adversely affect either an employee or an appointing authority; and such parties are not adversely affected in those cases

where the appointing authority seeks an upward classification for an employe, nor where the employe with the approval of the appointing authority, seeks such upward reclassification, unless it is proposed by the commission to deny such reclassification. Where the commission on its own initiative proposes to reclassify an employe, any proposed downward reclassification would adversely affect the employe concerned, and any proposed upward reclassification might adversely affect the appointing authority; and notice and opportunity for hearing is required in all such cases.

Columbus, Ohio, March 26, 1954

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

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“Section 143.09 of the Revised Code of Ohio, among other provisions, authorizes this Commission to allocate, reallocate, assign, and reassign employees to classifications. The number of employees who are effected by such personnel actions is very large. It is estimated that there are approximately three thousand a year.

“While some of these personnel actions may be initiated on the motion of the Commission, or by the employee himself, the great majority, by far, are occasioned by requests of the appointing authorities and in practically all cases result in an increase in salary for the employees concerned.

“Paragraph E of the aforesaid Section outlines in general terms procedure to be followed by the Commission relative to the reclassification of employees. The full scope or meaning of this paragraph is not clear to the Commission. Your opinion, therefore, is requested in the following respects:

“a) Does Section E apply to all cases where employees who are allocated, reallocated, assigned, reassigned, and to positions which are classified or reclassified regardless of whether such action is initiated by the Commission, the employee, or appointing authority?

“b) The procedure which must be followed by this Commission in effecting any of the foregoing personnel actions.

“c) In the event a hearing is required upon any of the foregoing personnel actions, what procedure is necessary to be followed for such hearing?

“Our request for your opinion on the foregoing does not include the procedure to be followed in the establishment of new or additional classifications or the assignment or reassignment of classes to new or different pay ranges as stated in sub paragraph 3 of Section c as referred to above.”

The initial paragraph of Section 143.09, Revised Code, reads in part as follows:

“(A) All positions, offices, and employments paid in whole or in part by this state or paid out of any rotary fund of any state department or state institution, except those excluded in sections 143.09 to 143.12, inclusive, of the Revised Code, are classified hereby as follows: * * *.”

This paragraph then goes on to list some hundreds of positions by descriptive titles, assigning to each a classification number. The position so listed, we may incidentally note, are assigned to pay ranges under the provisions of Section 143.11, Revised Code.

Thus far we find only a list of possible job classifications in the state service, a list which in itself would be without significance unless provision were made for the assignment of actually existing state jobs to such classifications. This was done shortly after the passage in 1949 of the so-called salary adjustment act, Amended Substitute House Bill No. 382, 98th General Assembly. In that act there was enacted Section 486-7a, General Code, later recodified as Section 143.09, *supra*. As originally enacted, paragraph 2 of Section 486-7a provided for an initial survey by the civil service commission with a view to the assignment of each state job to one of the classifications thus listed. This survey and assignment was accomplished in the latter part of 1949 and became effective on January 1, 1950. The provision analogous to paragraph 2 of Section 486-7a, General Code, is now found in paragraph (B) of Section 143.09, Revised Code, which paragraph reads in part:

“(B) The state civil service commission shall prepare and may amend from time to time, specifications descriptive of duties, responsibilities, requirements and desirable qualifications of the classifications set forth in this section, *may allocate and reallocate any position, office or employment to the appropriate class* among those set forth in this section on the basis of the duties, responsibilities, requirements and qualifications of such positions, offices or employments, *may assign and reassign employees to the appropriate classifications on the basis of the actual duties being performed*, and may require appointing authorities to furnish the commission with such information with respect to

personnel actions, including data pertinent to position control, as the commission may deem necessary and upon such forms as the commission may prescribe.

“Upon assigning or reassigning an employee to a new classification, the commission shall notify in writing such employee and his appointing authority.” (Emphasis added.)

At this point it becomes important to recognize that we are here concerned with two functions, each distinct from the other in theory, but which are sometimes confused in practice. The first such function is the survey of the duties and responsibilities actually attached to particular jobs under the currently existing administrative organization, prescribed by particular statutes where applicable, or effected by executive orders of the department head concerned, and the *allocation of such jobs* to appropriate classifications. The second such function relates to the *assignment of the incumbents* of such jobs prior to such reclassification to *particular jobs as reclassified*.

This distinction may be illustrated by the case of individual A who is the incumbent of job X, previously classified as Clerk, Grade I. Following a survey the commission might decide that the duties of job X warranted *allocation* to the job classification of “1002 Clerk II.” In this situation, A, who individually enjoyed the classification of Clerk, Grade I., presumably as the result of competitive examination, finds himself without a specific job in that classification to which he can be assigned. In a sense “his” job has been abolished through a reclassification.

It is quite evident, however, that it was the legislative intent that the tenure secured by the civil service laws should not thus be lost for we find in paragraph (B) of Section 143.09, *supra*, the provision that the “commission * * * may allocate and reallocate any position * * * to the appropriate class * * * (and) *may assign and reassign employees to the appropriate classifications* on the basis of the actual duties being performed * * *.” (Emphasis added.) We may conclude, therefore, that where any *reclassification of a job* is concerned it was the legislative intent that attention should be given also to the *reassignment of the incumbent of such job*, although from the statutory provisions thus far noted it does not appear that the incumbent must necessarily be reassigned to the higher classification to which the job he has previously held has been allocated.

With these distinctions in mind we may note the following provisions in paragraph (D) of Section 143.09:

“To standardize all positions, titles, classes, salaries and wages of employees in the state service, the commission, on its

own motion, shall initiate and make continuing audits, inspections and investigations of the several positions, offices and employments of the state service subject to sections 143.09 to 143.12, inclusive, of the Revised Code. Any employee, any appointing authority, and any representative of any group of employees, desiring to submit facts for consideration of the commission, shall be afforded reasonable opportunity to do so. When the commission finds that inequities, injustices, or improper classifications of employees exist, it may reassign upward or downward any employee to any appropriate class of positions, offices or employments among those set forth in this section as is necessary to provide more nearly an equitable, just and proper classification."

In this provision we still observe the distinction between the job and the incumbent, the former to be standardized throughout the state service, and the latter to be reclassified to prevent inequities. In these processes it is entirely conceivable that an audit by the commission might find individual A classified as Clerk, Grade II, in job X; and might disclose the propriety of the job being allocated a classification of Clerk, Grade III, but that A was so unskilled or inept as to justify his classification downward to Clerk, Grade I, or vice versa. In either event it would seem that the reassignment of the individual in such case would depend on the availability in the department concerned of a job of the classification to which such individual could consistently be assigned.

It is apparent, however, from the language employed throughout Section 143.09, Revised Code, that it was the legislative concept that in the normal situation the reclassification of the job and the reassignment of the individual incumbent would be parallel and coincident, and your inquiry indicates that this is the situation in virtually all of the cases which come to the attention of the commission. It seems necessary to preserve the distinction between these two functions, however, in the solution of your question regarding the appeals provided for in paragraph (E) of Section 143.09, Revised Code. This paragraph reads:

"(E) Where the commission proposes to reclassify any employee, said commission shall give to the employee affected, and to his appointing authority, a notice in writing setting forth the proposed new classification, pay range and salary. An employee or appointing authority desiring a hearing shall file a written request therefor with the commission within ten days after receiving said written notification; whereupon the commission shall set the matter for a hearing and notify said employee and the appointing authority of the time and place of said hearing. Such hearing may be conducted by the commission or by the person or persons designated by the commission. The employee,

or the appointing authority, or the authorized representative of any employee, desiring to submit facts for the consideration of the commission, shall be afforded reasonable opportunity to do so. After such hearing the commission shall consider anew such reclassification and then may proceed to reclassify the employee and assign him to such appropriate classification as the facts and evidence warrant. The commission shall refuse to reclassify and reassign to a lower classification any employee where it finds that changes have been made in the duties and responsibilities of any particular employee for political, religious or other unjust reasons."

It is well established that the incumbent of a public office has no such vested right to his office as would prevent the modification or abolition of such office. 42 American Jurisprudence, 904, 905, Section 33. A fortiori, the same rule must be deemed applicable to public employment. Accordingly, just as there is no obligation on the Legislature to continue a useless office for the sake of the person who may be in possession of it, there is no obligation on the commission to continue a job in a particular classification for the purpose of allowing an individual to continue as the incumbent of such job. It follows from this that such individual has no such interest in *the classification of the job* he holds as would afford him the right of appeal under the administrative procedure act, for appeals under that act are limited, in Section 119.12, Revised Code, to "any party adversely affected," and "party" is defined in Section 119.01, Revised Code, as "the person whose interests are the subject of an adjudication by an agency." This is not to suggest, of course, that it would necessarily follow that the provisions of such act would not be applicable where the reclassification or reassignment of an individual, adverse to his interests, is involved.

It would appear, however, that the Legislature, recognizing the fact that the individual could have no legitimate interest in the job classification as such, but recognizing also that the individual's assignment to a job of a classification at variance with his personal classification, attained by competitive examination, would to some extent depend on the commission's action in job classification, deemed it appropriate to provide the special means set out in paragraph (E), supra, to afford a hearing for the individual concerned on the issue of personal classification of the incumbent. Such provision for notice and hearing by the commission on the matter of reclassification of the individual having thus been *specially* provided it necessarily follows that the comparable *general* provisions in the administrative procedure act would not be applicable. The specific ques-

tion here raised is whether such provision for notice and hearing is applicable in every instance, or only in those cases initiated by the commission, or in only certain of such latter category.

It may be suggested that in the sense in which it is here employed the word "proposes" is indicative of the notion of bringing forward for consideration and adoption. This meaning might perhaps suggest a connection with the action of the commission under authority of the next preceding paragraph of this section, i. e., paragraph (D), in the matter of making "on its own motion * * * continuing audits, inspections and investigations of the several positions, offices and employments in the state service." However, the language of paragraph (D) providing for the submission of facts by "any employee, any appointing authority, or any representative of any group of employees" clearly suggests that in many cases the commission's "audits" etc. are actually initiated by these parties rather than upon the sole initiative of the commission; and I understand from your inquiry that such is actually the experience of the commission. This suggests in turn that the commission's "proposals" to reclassify are not to be deemed limited to those arising from the audits initiated by it but include as well those resulting from investigations set in motion at the instance of the employees or appointing authorities concerned.

It should be remembered, however, that the provisions of paragraph (E), supra, are concerned with what is essentially an administrative hearing, the proceedings in which may possibly become the basis of an appeal to the courts as provided in the administrative procedure act. The whole theory of appellate procedure, however, is based on the propriety of affording a review of an action which adversely affects the interests of the party for whose benefit the appeal is afforded. Indeed, the administrative procedure act expressly provides for an appeal by "any party adversely affected."

It cannot be supposed that the special provision in this section for a notice and hearing is intended to be applicable beyond the normal scope of administrative adjudication hearings generally and we may conclude, therefore, that such provision is applicable only in those cases where either the individual or the appointing authority concerned is "adversely affected," i. e., where a classification sought is proposed to be denied, or where a classification being resisted is proposed to be established.

In this view of the matter it follows that such provision for notice and hearing is not applicable where a reclassification upward is sought by

either the employe or the appointing authority unless the commission "proposes" to deny such reclassification. Similarly, where the employe seeks an upward reclassification which is resisted by the appointing authority, a notice must be given and a hearing had regardless of the commission's initial reaction to the application. Finally, of course, in any proceeding in which the employe's reclassification downward is either sought by the appointing authority or proposed independently by the commission, opportunity for a hearing must be afforded the employe concerned.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. The civil service commission in reclassification proceedings under the provisions of Section 143.09, Revised Code, is concerned with two distinct functions, i. e., (1) the allocation of a particular position, office or employment to one of the classifications listed in such section, and (2) the reclassification and assignment of an individual incumbent to such position as reclassified, or to a position consistent with such individual's reclassified status.

2. The provisions of the administrative procedure act are not applicable to actions of the civil service commission in the allocation of particular positions, offices or employments in the state service to one of the classifications listed in Section 143.09, Revised Code; nor are the provisions of such act relating to notice and hearing by an administrative agency applicable with respect to hearings by the commission in proceedings to reclassify and reassign individual incumbents of reclassified positions, special provision for such notice and hearing having been made in paragraph (E) of Section 143.09, Revised Code.

3. The provision for notice and hearing by the commission, as set out in paragraph (E) of Section 143.09, Revised Code, is applicable only in cases where the proposed action of the commission would adversely affect either an employe or an appointing authority; and such parties are not adversely affected in those cases where the appointing authority seeks an upward classification for an employe, nor where the employe with the approval of the appointing authority, seeks such upward reclassification, unless it is proposed by the commission to deny such reclassification. Where the commission on its own initiative proposes to reclassify an employe, any proposed downward reclassification would adversely affect the employe concerned, and any proposed upward reclassification might adversely affect the appointing authority; and notice and opportunity for hearing is required in all such cases.

Respectfully,

C. WILLIAM O'NEILL
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