

4365.

CIVIL SERVICE COMMISSION—CERTIFICATION OF APPROVAL OF PAYROLL UNDER SEC. 486-21 MANDATORY—DEPUTIES OF COUNTY RECORDER MAY BE IN UNCLASSIFIED CIVIL SERVICE.

*SYLLABUS:*

1. *A County Recorder is entitled to have any or all of his deputies as distinguished from his other employes placed in the Unclassified Civil Service. The State Civil Service Commission should be notified of the appointment of such deputies as are placed in the Unclassified Civil Service.*

2. *The provisions of Section 486-21, General Code, are mandatory in so far as they require the certificate of approval of payrolls from the State Civil Service Commission.*

COLUMBUS, OHIO, June 26, 1935.

HON. JOHN M. KIRACOFFE, *Prosecuting Attorney, Eaton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“The County Recorder of Preble County, Ohio, E. S., has requested that I obtain your opinion of the following statement of facts and queries:

There was allowed in the budget for the Recorder's office an allowance for two clerks or deputies, one a full time deputy and the second for a part time deputy. At the beginning of the year and the fourth term of Mr. S. as recorder, he certified to the Auditor of Preble County the appointment of I. S. as his second deputy to serve until he notified the Auditor of the discontinuation of the service and to commence again when he so informed the Auditor.

Due to the pressure of business in the office, Miss I. S. assumed her duties the first of January, 1935, and continued until the 15th day of May, 1935.

The payroll, including the names of all the officials their deputies and clerks with the salary due each is forwarded to the Civil Service Commission before each pay for their approval. The payment of the salary of I. S. was disapproved by the Civil Service Commission for the first half of May, 1935, and she has not yet been paid, although she is not in the classified service.

The Commission disapproved the payroll of I. S. according to their letter, ‘in view of the fact that notification of appointment of this deputy has not been sent to this Commission although requested.’

1. Is it necessary to notify the Commission of the appointment of a deputy?
2. How many deputies is this office allowed without Civil Service Examination?
3. Is it necessary to have the approval of the Civil Service Commission before payment of salaries of Clerks and Deputies who are not Civil Service appointments and is it necessary for the Auditor to ask their approval of all these said deputies?”

Article XV, Section 10 of the Ohio Constitution reads as follows:

"Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

Pursuant to this constitutional mandate a comprehensive scheme of legislation for regulating Civil Service in Ohio was adopted by the legislature. See Sections 486-1 et seq., General Code.

Among the powers of the State Civil Service Commission authority was given to that body to adopt rules and regulations for the purpose of carrying out and making effectual the provisions of the Civil Service Act. See Section 486-7, General Code. Section 486-8, General Code, designates the positions that shall be in the Classified and the Unclassified Civil Service. This section reads in part as follows:

"The civil service of the state of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service.

(a) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required in this Act.

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8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant or clerk and stenographer.

9. The deputies of elective or principal executive officers authorized by law to act for and in the place of their principal and holding a fiduciary relation to such principals. \* \* \*

It is apparent that under the provisions of subsection 8 supra, the County Recorder may exempt two secretaries, assistants or clerks and one personal stenographer from the Classified Civil Service and place them in the Unclassified Civil Service. Likewise under subsection 9 supra, the County Recorder may place any deputies that he may have under the Unclassified Civil Service.

Pursuant to the statutory authority granted under Section 486-7, General Code, the State Civil Service Commission adopted Rule #3. This rule reads in part as follows:

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Section 2. (a) Within thirty days after taking office, each elective officer and each principal appointive executive officer, board or commission shall designate the position for which exemption from the competitive classified service is claimed under the provisions of paragraph 8, subsection (a), of Section 486-8 of the law, and thereafter no change in the designation of exemptions claimed under this provision which would result in the separation of a classified employe from the service shall be made during the incumbency of such officer, board or commission, except after the filing of a statement of reasons for such proposed change satisfactory to the Civil Service Commission of thirty days' notice thereof in order that a proper eligible list, if none is avail-

able, may be created by competitive examination from which to fill any position classified as the result of such change. If, at the expiration of thirty days after taking office, exemptions have not been designated by the appointing officer, board or commission as herein provided, the exemptions theretofore designated and in effect under this provision of the law shall be considered the exemptions claimed by such appointing authority and will be continued in effect.

(b) 'After a proper eligible list has been created by competitive examination to fill any position in the classified service, no exemption under the provisions of Section 486-a-8 of the Civil Service Law may thereafter be claimed so long as a full and complete eligible list exists and so long as such list was created subsequent to an opportunity to claim such position exempt when no list existed.'

Section 3. Notices from appointing officers of the appointment of deputies exempt from the classified service under the provisions of paragraph 9, subsection (a) of Section 486-8 of the law shall be accompanied by a statement of the provisions of the law under which such deputies are appointed and a statement of the duties to be assigned to such appointees indicating the extent to which they are required to act for and in place of their principals. \* \* \*

In your first question you ask whether or not it is necessary to notify the State Civil Service Commission of the appointment of a deputy. The answer in the affirmative is to be found in the above quoted Section 3 of Rule 3.

From your letter it is not clear whether or not I. S. is in fact a deputy. Even if she is not a deputy and is exempt under the provisions of Section 486-8(a)-8 it would be necessary to notify the Commission of such claimed exemption under the provisions of above quoted Section 2 of Rule 3. In passing it would appear that Sections 2 and 3 of Rule 3, supra are reasonable in so far as they require notification of exemptions under Section 486-8-(a)-8 and 486-(a)-9.

In answer to your second question, as to how many deputies in the County Recorder's office may be placed in the Unclassified Civil Service it is to be noticed that Section 486-8-(a)-9 places no limitation as to the number. It is only necessary that the persons claimed as deputies are in fact persons who are authorized by law to act for and in place of the county recorder and hold a fiduciary relation to such county recorder.

In answer to your third question I call your attention to Section 486-21, General Code. This section reads in part, as follows:

"After the taking effect of this act it shall be unlawful for the auditor of state, or for any fiscal officer of any county, city or city school district thereof, to draw, sign or issue or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state, or of any county, city or city school district thereof, to pay any salary or compensation to any officer, clerk, employe, or other person in the classified service unless an estimate, payroll or account for such salary or compensation containing the name of each person to be paid, shall bear the certificate of the state civil service commission, or in case of the service of a city, the certificate of the municipal service commission of such city, that the persons named in such estimate, payroll or account have been appointed, promoted, reduced, suspended, or laid off or are being employed in pursuance of this act and the rules adopted thereunder. \* \* \*"

In view of the fact that the employe or deputy in question has never been placed in the Unclassified Civil Service it would follow that the action taken by the Civil Service Commission in refusing to approve the payroll was authorized under the provisions of Section 486-21, General Code, supra.

In view of the above and without extending this discussion it is my opinion that:

1. A County Recorder is entitled to have any or all of his deputies as distinguished from his other employes placed in the Unclassified Civil Service. The State Civil Service Commission should be notified of the appointment of such deputies as are placed in the Unclassified Civil Service.

2. The provisions of Section 486-21, General Code, are mandatory in so far as they require the certificate of approval of payrolls by the State Civil Service Commission.

Respectfully,

JOHN W. BRICKER.

*Attorney General.*

4366.

GENERAL ASSEMBLY—MEMBER THEREOF MAY ACCEPT CERTAIN OFFICES WHEN.

**SYLLABUS:**

1. *A member of the General Assembly may lawfully accept any of the positions of clerk or deputy in the office of a county treasurer or surveyor, and road foreman or laborer under the county surveyor, during the period the legislature is not in session, but upon accepting such employment he is required by section 15, General Code, to forthwith resign his legislative office, and upon failure so to do such office becomes vacant.*

2. *If a member of the General Assembly accepts any of the employments mentioned in syllabus 1 upon adjournment of the legislature from its regular session, the tender of his resignation from such an employment prior to reconvening of the legislature in a special session will not serve to reinstate him as a member of the General Assembly.*

COLUMBUS, OHIO, June 26, 1935.

HON. FRAZIER REAMS, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a recent communication from your assistant Paul W. Alexander, as follows:

“May a member of the General Assembly lawfully accept any of the following employments during the period the Legislature is not in session:

- (a) As deputy in the office of the County Treasurer or Surveyor;
- (b) As clerk in the office of the County Treasurer or Surveyor;
- (c) As road foreman or laborer under the County Surveyor?

Should such member of the General Assembly accept any of the foregoing employments upon adjournment of the Legislature and tender his resignation from such employment prior to the reconvening of the Legislature, would he have forfeited his right to his seat in the General Assembly?”