

It also appears from your letter that the clerk of the board of county commissioners attended the meeting. Section 1183-1 of the General Code of Ohio does not give authority to the state highway director to include the clerk of the board of county commissioners in his call for meetings. While Section 2413, General Code, allows reasonable expenses to be paid to the clerk of the board, in view of the fact that the attendance of the clerk at the meeting of the highway commissioner is not authorized, there is no legal basis for the allowance of the expense of the clerk. In an opinion of the Attorney General, reported in Opinions of the Attorney General for the year 1920, Vol. I, page 30, it was held that deputy county surveyors are not, by virtue of Section 1185-1 of the General Code, nor of Section 2786 of the General Code, entitled to reimbursement for expenses incurred in attending a meeting of county surveyors called by the state highway director, as authorized by Section 1185-1, General Code, 108 O. L. Pt. 1, page 481.

I feel that the reasons given by my predecessor in that opinion apply equally as well to a clerk of the board of county commissioners as they do to deputy county surveyors.

Section 1183-1 of the General Code of Ohio does not authorize the state highway director to call county surveyors to attend conference or school, as provided in that section. While Section 1183, General Code, authorizes the appointment of county resident district deputy directors, yet when a surveyor is so appointed, Section 1183-1, General Code, deals with him not as a county surveyor but as a resident district deputy director of highways. Section 1183-1 does not provide for the payment of the expenses of resident deputy directors, as such, incurred by them in attending the conferences provided in that section. Therefore, a county surveyor, acting in the capacity of a resident district deputy director, is no more entitled to the reimbursement of expenses than any other resident deputy director. Section 1183-1, General Code, does not authorize a county surveyor in the performance of his duties as a county surveyor to attend a meeting called by the highway director by virtue of Section 1183-1, General Code, so, there being no legal basis for incurring expenses in traveling to such a meeting by a surveyor, as provided in Section 1183-1, General Code, he is not entitled to be reimbursed his expenses for traveling by the county.

I am of the opinion that county commissioners are entitled to the reimbursement of actual and necessary expenses incurred for the hire of an automobile to transport them to a meeting called by the state highway director, as authorized by Section 1183-1 of the General Code, and that it is immaterial whether they hire the county surveyor or anyone else to transport them. I am further of the opinion that a clerk of the board of county commissioners or a county surveyor is not entitled, by virtue of Section 1185-1 of the General Code, to be reimbursed for expenses incurred in attending a meeting of resident district deputy directors and county commissioners, as authorized by Section 1183-1, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

260.

AUDITOR—DEPARTMENT OF HIGHWAYS—UNDER CIVIL SERVICE
UNLESS EXEMPTED UNDER SUB-SECTION 8 OF SECTION 486-8,
GENERAL CODE.

SYLLABUS:

The Auditor of the Department of Highways appointed under Section 1181-1 of the General Code, is in the classified civil service of the State unless exempted there-

from under the provisions of sub-section 8 of paragraph (a) of Section 486-8 of the General Code.

COLUMBUS, OHIO, April 3, 1929.

HON. ROBERT N. WAID, *Director Department of Highways, Columbus, Ohio.*

DEAR SIR:—Your communication of recent date reads as follows:

“Section 1181-1, General Code of Ohio, provides for an auditor of the state highway department. Sections 1180-1, 1181, 1182, 1183 and 1182-1 provide for the other principal officials of the highway department, setting forth that each shall be exempt from the state civil service requirements or regulations. This specific provision is not made in Section 1181-1 covering the position of Auditor. However, Section 486-8, p. a-9, provides that deputies holding positions of a fiduciary nature are exempt.

Inasmuch as Section 1181-1 makes it mandatory that the director appoint an auditor and also provides that said auditor shall give a bond in the sum of ten thousand dollars, we are in doubt as to the civil service status of this position.

Will you kindly render a formal opinion as to the intent of the law in this instance?”

Section 1181-1 of the General Code, to which you refer, as enacted in 112 Ohio Laws 434, provides:

“The director shall appoint an auditor whose especial duty it shall be under the supervision and direction of the director, to examine into and supervise the methods of bookkeeping and accounting of the department of highways and all similar matters relating to its management. The auditor, under the general supervision of the director, shall prescribe methods of accounting for the department, and the accounting force of the department shall be under his direction. It shall be the duty of the auditor to devise and install in the department a system of bookkeeping adequate to the needs thereof, and the accounts of the department shall be so kept under his supervision that such accounts shall at all times clearly and plainly exhibit the several appropriations available for the use of the department, the specific amounts of each such appropriation set aside or apportioned by the department for each improvement or purpose, the apportionment or division of all such appropriations among the several counties of the state, where such apportionment or division is so made, the amount or portion of each such apportionment against which contractual liabilities have been created, and the amount expended and still to be expended in connection with each contractual obligation of the department. The auditor shall establish such system in the department as will afford a full and complete check against the improper payment of any bills from the funds of the department, and equally, provide for the prompt payment of the just obligations of the department. The auditor shall act under the general supervision and control of the director and shall perform such other similar duties as may be designated by the director. He shall give a bond in the sum of ten thousand dollars, and shall receive a salary of four thousand dollars per annum.

The powers and duties conferred by this section shall be subject to such control as is now or may hereafter be conferred by law upon any department of the state government with respect to the financial transaction of the departments, offices and institutions of the state government.”

It is unnecessary to discuss in detail the duties of such auditor in view of the clearness of the language of the section above quoted. It may be stated, however, that such auditor is entirely under the supervision of the director in the performance

of his duties. While he is required to give bond, it appears to be clear that he is not an official but rather is to be regarded as an employe.

It is believed pertinent to consider the provisions of Section 486-8 of the General Code, which is part of the civil service law and in part provides:

“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.

* * * * *

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

The quoted portion of the section presents the question as to whether the auditor of the department of highways is a deputy within the meaning of sub-section 9 of paragraph (a) thereof. If it is, then of course such position is clearly exempt from the classified service. The unquoted exemptions in the section can have no application, except sub-section 8 hereinafter mentioned.

In examining the history of Section 1181-1 and its related sections, it will be observed that Section 1180-1, which originally related to the appointment of the first assistant state highway commissioner (now first assistant highway director) to serve during the pleasure of the state highway commissioner (now director) was enacted by the 84th General Assembly in 109 Ohio Laws, p. 154. Section 1181 was amended in the same act providing for three deputy highway commissioners (now directors) to serve during the pleasure of the commissioner. Section 1181-1, providing for the position of auditor, was substantially in the same form as it now exists in so far as your question is concerned. Section 1182 was amended in the same act, which provides for resident deputy state highway commissioners (now directors) to serve during the pleasure of the commissioner (now director).

From the foregoing it appears to be clear that the intention of the Legislature in creating the positions under consideration was to specify those that were to have a term of office inconsistent with the tenure of office as defined by Section 486-17a, General Code, which relates to civil service employes. The same distinction that was made in 109 Ohio Laws with reference to such tenure of service when the Legislature in the same act was considering all of the sections which you mention, was made, as stated in your communication, in the amendments of said sections in 112 Ohio Laws. While the fact one is called a deputy is not necessarily determinative of the question as to whether or not one actually as a matter of law is a deputy, the fact that he is specifically designated as a deputy is some indication of the legislative intent as to the capacity in which he is to serve. When such an employe is designated as a deputy, and his term is fixed at the pleasure of the appointing power, the conclusion is irresistible that such an employe is in the unclassified service. Likewise, if the Legislature in statutes later in the order of time of enactment than Section 486-8 of the civil service law, clearly fixes the term of an employe at a period which is inconsistent with the civil service law, it is, in the absence of some other language or circumstance indicating a different intent, conclusive as to the Legislature's intention that such a position is to be regarded as in the unclassified service. However, under the circumstances such as we have before us, where the Legislature expressly recognizes some positions as being in the unclassified service and creates a position such as the auditor of the highway department without making any indication as to

his term of office and does not designate him as a deputy, the conclusion is compelled that such a position is in the classified service. In examining Section 1181-1, with reference to the duties of the auditor of your department, it would appear that he is in no different status than many other employes in your department and in other departments in so far as the fiduciary relationship is concerned, which said positions are regarded as in the classified service.

In this connection it will be noted that under sub-section 8 of paragraph (a) of Section 486-8, General Code, each of the principal appointive executive officers of the State is entitled to have exempted from the classified service two secretaries, assistants or clerks and one personal stenographer. It follows of course that the auditor may be exempted by you as an assistant, if you so desire.

In view of the foregoing, you are specifically advised that it is my opinion that the Auditor of the Department of Highways appointed under Section 1181-1 of the General Code, is in the classified civil service of the State unless exempted therefrom under the provisions of sub-section 8 of paragraph (a) of Section 486-8 of the General Code.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

261.

BOARD OF EDUCATION—INJURY IN MANUAL TRAINING DEPARTMENT OF A SCHOOL—NO LIABILITY FOR DAMAGES.

SYLLABUS:

A board of education is not liable in its corporate capacity for damages for an injury resulting from the use of the machines or apparatus in the manual training department of a school.

COLUMBUS, OHIO, April 4, 1929.

HON. MARION F. GRAVEN, *Prosecuting Attorney, Wooster, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion as follows:

“The following question concerning the liability of a board of education of Orrville, Ohio, presents itself as follows:

Is a board of education liable for the injury of one of the pupils in the Orrville High School, in the Manual Training Department resulting from an injury by a rip saw equipped with an approved guard?

The teacher of the Manual Training Department has always warned the pupils not to use the saw in question unless he was present, and never without a guard. The boy apparently in this case violated these instructions.

The doctor bill resulting from this injury amounts to \$65.00. An application has been made and filed against the board of education for the payment of that amount. Suit is threatened unless same is paid.

Please forward to me your opinion in regard to this matter.”

After more or less judicial uncertainty in this State, it has been definitely determined by the Supreme Court, in the case of *Board of Education vs. McHenry, Jr.*, 106 O. S. 357, that a school district is not responsible in damages for the failure of its