

1842.

APPROVAL, BONDS OF VILLAGE OF GARFIELD HEIGHTS, CUYAHOGA COUNTY, \$40,000.00, STREET AND SEWER IMPROVEMENTS.

COLUMBUS, OHIO, October 15, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1843.

CLASSIFIED SERVICE—DISTRICT BOARD OF HEALTH—AUTHORITY OF BOARD TO EXEMPT CERTAIN POSITIONS DISCUSSED.

SYLLABUS:

A city district board of health may claim exemption from the classified service as provided in paragraph 8 of section 486-8 in the manner provided for in section 2 of rule III of the civil service commission. Under this rule, when no exemption has been made there should be no change that will result in dismissing a classified employe from the service unless approved by the civil service commission, until such time as the state civil service clarifies such rule indicating when a board or commission shall be considered as "taking office" in view of the same.

COLUMBUS, OHIO, October 15, 1924.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen:—

In your recent communication you request my opinion as follows:

"Section 486-8, General Code, defines the classified and unclassified civil service of the state of Ohio and the several counties, cities and school districts thereof. Paragraph 8 of this section places certain positions in the unclassified service, among which are three secretaries, assistants or clerks and one personal stenographer for each of the elected state officers; and two secretaries, assistant 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.

In the City of _____ the health commissioner was required to take a civil service examination and was appointed to his position pursuant thereto. The local board of health making this appointment has never exempted the position from the classified service.

The synopsis of Opinion No. 371, Opinions for 1917, Volume 2, page 1007, reads as follows:

"The health officer appointed by the municipal board of health is an

'assistant' to such board, and may be selected as exempt from the classified civil service under paragraph 8 of section 8 of the civil service law.

The sanitary policemen appointed by such board are not 'assistants' in contemplation of the provisions of said section and may not, therefore, be selected as exempt from the classified service under favor of the provision of said paragraph."

In a letter dated March 18, 1924, and addressed to the Bureau you advised that a member of a city health board is not a municipal officer but a state officer as a municipal health district is a part of the state health district.

Question 1. In view of the above opinions, may the health commissioner of a city health district appointed by the local board of health be included in the classified service of the city?

Question 2. If the health commissioner had been included in the classified service could a city board of health at this time exempt the position from such classified service and remove the incumbent from office?

Question 3. A local board of health being a state board, may its employes including sanitary officers be included in the classified service of the city?"

As suggested in your communication, the exemptions relating to your question are provided for in paragraph 8 of section 486-8 of the General Code. Said paragraph reads:

"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."

Under this provision "boards or commissions" are entitled to the three exemptions, one personal stenographer and two other secretaries, assistants or clerks. Undoubtedly, a district board of health comes within the provisions of this section, because the civil service law attempts to regulate the whole field of the subdivisions of the state, except wherein it has made special exemption.

In your communication it is suggested that this department has indicated previously that a member of a city board of health is not a municipal officer but a state officer. In so far as your question is concerned, it is believed that this particular status need not be considered, for the reason that there is a board provided for, whether it be from a technical standpoint, a municipal board or whether it be a part of the general state system.

Section 1261-16 provides for the creation of a general health district and a city health district, each of which constitutes a district board of health. A city board of health is appointed under the provisions of Section 4406 by the mayor. Such board, while under the general supervision of the state department of health, exercises independent functions and is a board within the meaning of Section 486-8. Therefore, generally speaking, it must be said as a legal proposition that such board may exercise its right to exemptions referred to in such section. However, it must be borne in mind that this right must be exercised in the manner provided for by the rules of the civil service commission.

Section 2 of Rule III of such commission provides as follows:

"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 and thirty days notice thereof in order that a proper eligible list, if none is available, 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 therefore 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."

It will be noted from this section that when a position is once filled by a competitive examination, no change in this designation of exemptions may be had which would result in the separation of a classified employe from the service, unless a statement is made by the appointing authority of the reasons for such proposed change, satisfactory to the civil service commission. This provision, of course, does not apply to cases wherein the exercise of such exemption is made within thirty days after the taking of office. At this point there is some difficulty in connection with the question, for the reason that such a board as a board of health is a continuing body and there is never a time when there is a complete change in the personnel of a majority of the board, in the ordinary course of events. Of course, it is possible to have such a change in the event of a vacancy in a majority of the positions occurring at one time, but such cases will be rare. On the other hand, it is the intent of the law in the provisions for such appointments to prevent there being more than one vacancy at one time. There would be no doubt but that when the board was first established it would "take office" in view of the rule mentioned. Of course, it can be argued that the board would take office from the time it is organized after a new member is appointed. In so far as it has come to my attention, there have been no decisions upon this question, and it is difficult of solution. Undoubtedly, the Civil Service Commission may clarify the rule by indicating what shall be considered the "taking of office" by a board or commission, in view of such rule, if it so desires.

However, it must be remembered that it is the policy of the law of this state, both statutory and constitutional, to maintain the classified service excepting in those cases in which an opposite intent is clearly expressed. Therefore, in the case you present I would advise that any change which has the effect of severing one from the classified service should not be attempted without the approval of the Civil Service Commission. At least, this policy should be adopted until the State Civil Service Commission has clarified the rule under consideration, indicating a different intent.

Respectfully,

C. C. CRABBE,

Attorney General.