

1972.

CLASSIFIED CIVIL SERVICE OF STATE—PERSON IN SUCH SERVICE WHO ACCEPTS PROBATE COURT CLERICAL WORK, NOT WITHIN PROHIBITION OF SECTION 486-23 G. C. TO “TAKE PART IN POLITICS.”

SYLLABUS:

A person holding a position in the classified civil service of the state does not bring himself within the prohibition of Section 486-23, Ohio General Code, or take part in politics by the mere acceptance of clerical work in a probate court.

Columbus, Ohio, March 6, 1940.

Hon. Nicholas F. Nolan, Prosecuting Attorney,
Dayton, Ohio.

Dear Sir:

Your letter of recent date inquires as follows:

“The Probate Judge of this County has requested that I secure your opinion on the following question: ‘Can one in the Classified Civil Service be employed by the Probate Court as a clerk to perform services demanded of the County under Section 5372-4, G. C., which service does not demand the same duties and does not in any way interfere with his employment in the Classified Civil Service.’”

If such employment is improper for an employe in the classified civil service, the impropriety must come from an incompatibility of the positions or from some prohibition in the laws governing civil service.

An examination of the facts as presented to me surrounding both employments discloses that it is not physically impossible for the employe to hold both positions and that neither position is subordinate to or a check on the other position, so that the possibility of incompatibility of the positions is eliminated.

The only provision of the civil service law which might prohibit two employments as here is Section 486-23, Ohio General Code, which is as follows:

“No officer, employe or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution or payment from any officer, employe or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; nor shall any officer or employe in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.”

Under that section and from the words “or take part in politics” attorneys general who have preceded me have held that one who offers him-

self for election to office or accepts an appointment to an office is taking part in politics. See 1929 Opinions of the Attorney General, Vol. II, No. 544; 1929 Opinions of the Attorney General, Vol. II, No. 1074; 1929 Opinions of the Attorney General, Vol. III, No. 1285; 1931 Opinions of the Attorney General, Vol. III, No. 3398.

An examination of the above opinions reveals that all are predicated upon the thought that Section 486-23, *supra*, was meant to secure to the state a body of civil employes detached from political influences and that election to or acceptance of an office presupposes an interest in politics inimical to civil service status.

A further examination of the above opinions shows that it might well have been presupposed that holding the offices considered therein was taking part in politics. In other words, the nature of the office in each instance was such that in the opinion of the then Attorney General the above conclusion sprang *per se* from the acceptance and holding of the office.

I can not find that such conclusion springs from the facts of the case which you present. Your inquiry states that the clerk duties of the person concerned do not interfere with the civil service employment of that person and I learn otherwise that the clerk duties consist of clerical work of a minor and special nature engaged in only occasionally and because of such person's especial knowledge of the duties concerned.

I can not find or presuppose, under such facts stated by you and in the absence of further facts, that the person concerned, as a matter of law, is taking part in politics as meant by the words of Section 486-23, *supra*. It does not follow logically from the facts presented that by accepting clerical work the employe concerned gains an interest hostile to the standards of civil service status. It might well be that such person might disqualify himself for civil service employment by further and additional activities which would clearly be of a political nature, but such facts as I have before me do not so indicate.

I am aware of the fact that the word "politics" is defined as "everything that concerns the government of the country" (Rawle's Third Revision, Bouvier's Law Dictionary), but in my opinion such word in its common and now accepted use means "the theory or practice of managing or directing the affairs of public policy or of political parties" (Webster's New International Dictionary).

Black's Interpretation of Laws at page 176, states that :

“ * * * in the interpretation of statutes words of common use are generally to be taken in their natural plain and ordinary signification as they are familiarly employed in the every day speech of the people. * * * ”

By that rule and by the context of Section 486-23, supra, it is my opinion that the latter definition of “politics” is meant as that word is used in that section and I am unable to find that the clerical employment of which you speak, per se, even though it may be in the unclassified civil service by the terms of Section 486-8(a)10, General Code, is equivalent to taking part in politics.

I am, therefore, of the opinion that a person holding a position in the classified civil service of the state does not bring himself within the prohibition of Section 486-23, Ohio General Code, or take part in politics by the mere acceptance of clerical work in a probate court.

Respectfully,

THOMAS J. HERBERT,
Attorney General.