

new registration and licenses for the motor vehicles, acquired pursuant to the consolidation agreement from the constituent corporations, inasmuch as the necessity for new license plates is dependent upon whether there is a transfer of ownership from one legal entity to another and in the proposed consolidation there would be such transfer.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2426.

CIVIL SERVICE—APPLICANT MAY NOT BE DENIED RIGHT TO
TAKE EXAMINATION BECAUSE OF FAILURE TO SET FORTH
HIS RACE IN APPLICATION OR ATTACH HIS PHOTOGRAPH
THERE TO.

SYLLABUS:

The Civil Service Commission of the State of Ohio may require persons applying for admission to an examination to set forth in such application, in addition to the matters specifically designated by section 486-11, General Code, such other information as may be reasonably required touching the applicant's merit and fitness for the public service sought, but no person can be denied the right to take an examination by reason of his failure to set forth in his application his race or to attach thereto his photograph.

COLUMBUS, OHIO, March 29, 1934.

HON. FRANK CAVE, *Speaker, House of Representatives, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of Amended House Resolution No. 26, adopted March 21, 1934, which reads as follows:

“90th GENERAL ASSEMBLY
SECOND SPECIAL SESSION

Am. H. R. No. 26

1933-1934.

Mr. Gillespie.

A RESOLUTION

Relative to requesting the
Attorney General to submit
an opinion.

WHEREAS, the State Civil Service Commission requires all persons taking a civil service examination to disclose the identity of their race and, also, to submit a photograph of themselves:.....
.....
.....

NOW, THEREFORE, BE IT RESOLVED, that the House of Representatives, now in session, does hereby request the Attorney General, within five days, to submit to the House of Representatives an official opinion with regard to the aforesaid policy of the said Commission, requiring applicants to disclose the identity of their race and to submit their photographs."

I am informed that applicants for admission to an examination are required to set forth on their applications their race as well as their nationality, age, residence and various other matters, and in some instances at least to attach their photographs to their applications.

The civil service laws were enacted in pursuance of section 10, article XV of the Ohio Constitution, for the purpose of securing appointments to the public service on the basis of merit and fitness. These laws impose upon the Civil Service Commission the duty of administering them and invest in it the general control of examinations including the power to make rules to carry out the provisions of the act. Sections 486-7 and 486-9, General Code. It is generally held that in the making of rules and regulations, in the performance of their duties and in the exercise of their powers, civil service commissions are vested with a broad discretion which will not be interfered with unless its abuse clearly appears. *Pratt vs. Rosenthal*, 181 Cal. 158; *Mann vs. Tracy*, 185 Cal. 272.

"The civil service commission has a discretion with respect to determining the physical and other tests to be applied at an examination and the exercise of this discretion will, obviously, not be interfered with or controlled by the courts." *People, ex rel., vs. Chicago*, 131 Ill. A. 266.

"In the absence of some express limitation the action of the commission * * * must stand, unless it is so clearly irrelevant and unreasonable as to be palpably indefensible and improper. If any fair, reasonable argument may be made to sustain the action the courts should not interfere, even though they may differ from the commission as to its advisability." *People, ex rel., vs. Creelman*, 206 N. Y. 570.

To the same effect are the following: *People, ex rel., vs. McWilliams*, 185 N. Y. 92; *Simons vs. McGuire*, 204 N. Y. 253; *Slavin vs. McGuire*, 205 N. Y. 84. Whether any action of the commission constitutes an abuse of discretion is, of course, a question of fact, and if the making of the requirements in question can be said to be within the express or implied powers of the commission, it could not be said, as a matter of law, that they would be invalid in the absence of evidence that they naturally resulted in or were made for the purpose of discrimination against or in favor of any race.

Civil service commissions, like other public officers and boards, have only such powers as are expressly conferred upon them and such other powers as are necessarily implied from those expressly granted. *Civil Service Commission vs. State, ex rel.*, 127 O. S. 261. While the Civil Service Commission is given the right to make rules, it can only make rules for the purpose of administering the law in accordance with the powers conferred upon it, and cannot by making rules assume power which it does not have. In the case of *Civil Service Commission vs. State, ex rel., supra*, the following was held:

"Where a certain jurisdiction is duly conferred, the duties assigned and powers granted to a board or commission, such board or commission cannot confer upon itself jurisdiction or add to its powers by the adoption of rules under authority granted to adopt rules of procedure."

In the case of *Bratton, et al., vs. Dice*, 27 Pac. 2nd 1028 (Colo.), the following was held:

"Municipal civil service commission cannot exercise power that is not expressly conferred and cannot assume power by making its own rules."

Section 486-11, General Code, expressly states what must be set forth in the application for admission to an examination. This statute reads in part as follows:

"The commission shall require persons applying for admission to any examination, provided for by this act or by the rules of the commission prescribed thereunder, to file with the commission within a reasonable time prior to the proposed examination a formal application in which the applicant shall state under oath or affirmation:

- (1) Full name, residence and postoffice address.
- (2) Nationality, age and place and date of birth.
- (3) Health and physical capacity for the public service sought.
- (4) Business and employments and residences for five previous years.
- (5) Such other information as may be reasonably required touching the applicant's merit and fitness for the public service sought; but no inquiry shall be made as to any religious or political opinions or affiliations of the applicant.

* * *

* * *

* * *

Blank forms for applications shall be furnished by the commission without charge to any persons requesting the same. * * *

In addition to the matters which are specifically designated in this statute, the commission may require the applicant, for the purpose of determining whether he should be admitted to an examination, to set forth only such additional matter which has any bearing on the merit and fitness of the applicant. If the legislature had intended to authorize the commission to require an applicant to set forth in his application, for such purpose, any information which the commission might deem advisable, it would not have limited such matters to those which relate to the applicant's merit and fitness for the public service sought. It could not ordinarily be said that the requirement that an applicant set forth his race or attach his photograph to his application has any relation to his fitness as a public servant, nor could it be said that the power to make such a requirement would be implied from the power expressly granted to require an applicant to set forth matters touching merit and fitness.

I am of the opinion therefore that the Civil Service Commission of the

State of Ohio may require persons applying for admission to an examination to set forth in such application, in addition to the matters specifically designated by section 486-11, General Code, such other information as may be reasonably required touching the applicant's merit and fitness for the public service sought, but no person can be denied the right to take an examination by reason of his failure to set forth in his application his race or to attach thereto his photograph.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2427.

CORPORATION—EXCHANGE OF DEBENTURES FROM FOREIGN CORPORATION TO SUBSIDIARY CORPORATION FOR PURPOSES OF REORGANIZATION EXEMPT FROM PROVISIONS OF SECTIONS 8624-4, 8624-9, 8624-10, GENERAL CODE, WHEN.

SYLLABUS:

When a foreign corporation is the owner of certain debentures of a subsidiary corporation, and with a view to its reorganization, solicits offers from its debenture holders to exchange such debentures for the debentures of its subsidiary on certain terms and conditions, if as and when such reorganization may be accomplished, the corporation forbearing the acceptance of such propositions until it is determined whether such reorganization may be accomplished and thereupon, through the medium of an escrow or trustee, completes such exchange, such transaction, by reason of the provisions of Section 8624-4, General Code, is exempt from the requirements of Sections 8624-8, 8624-9, 8624-10, 8624-13 and 8624-14, General Code, since it constitutes but a single transaction.

COLUMBUS, OHIO, March 29, 1934.

HON. JOHN W. POWERS, *Chief, Division of Securities, Department of Commerce, Columbus, Ohio.*

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

“The ‘A’ Company, a foreign corporation, possesses a large outstanding fixed interest bearing debt. It is a corporation which, because of a downward trend in earnings due to the depression, increased taxes and threatened additional taxes, rate reductions both threatened and actual, etc., is in imminent danger of becoming seriously involved financially. * * * Because of these conditions, ‘A’ Company is desirous of reducing the principal sum of these debentures outstanding, or the interest on the same, thus rearranging the financial structure of ‘A,’ and it has offered to its debenture holders three options. Under Options one and two, the debentures of its wholly owned subsidiary, ‘B’ Company, are offered in exchange for its outstanding securities. Under Option three, a new