

In so holding, I do not wish to be understood as saying that the village has no right whatsoever to improve a street that may constitute an extension of a state highway. By an independent proceeding the village may make such improvement of the street as it sees fit, being governed by the general sections of law applicable thereto. Such proceeding would, however, be one wholly within the authority of the village and the contract would have to be let by it, but it is conceivable that a proceeding by the village and one by the director might so be co-ordinated as to result in a joint improvement of the street in question.

In case of the county, however, it is quite apparent from the provisions of Section 1191, *supra*, that co-operation may be had in an improvement to a greater width than eighteen feet either within or without the limits of a municipality. You will note by the express language of the section that, where any portion of the work covered by such proposal of the county commissioners is within the limits of a village the consent of the village must be furnished. In this instance the work of reconstruction will be to a width in excess of eighteen feet. Under such circumstances I believe it within the authority of the county to co-operate by bearing a proportion of so much of the cost of the improvement as is in excess of eighteen feet."

It is obvious that what is said in said former opinion of this department with respect to the improvement of a village street as a continuation of a state road or highway has equal application under the provisions of Section 1224-1a, General Code, to the improvement of a city street which is a continuation of a state road or highway; and the above noted provisions of Sections 1191 and 1224-1a, General Code, and the former ruling of this department construing the same afford, I believe, a sufficient answer to the inquiry suggested in your communication as to the method in which the street here in question as a continuation of a state road may be improved by the Director of Highways in co-operation with the county and city.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2541.

CIVIL SERVICE—PROVISIONAL APPOINTEE IN STATE CLASSIFIED SERVICE—EMPLOYMENT CONTINUES ONLY UNTIL SUBMISSION OF ELIGIBLE LIST—DUTY OF APPOINTING AUTHORITY DISCUSSED.

SYLLABUS:

A person employed in a position in the classified civil service of the state under a provisional appointment can legally continue in such employment only until such time as a regular appointment to the position can be made from an eligible list submitted to the appointing authority by the State Civil Service Commission, and in such case such appointing authority cannot legally continue the status of such person as a provisional employe by refusing or neglecting to make a regular appointment to such position from the eligible list submitted.

COLUMBUS, OHIO, September 5, 1928.

The State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication which reads as follows:

“We desire to respectfully request your advice in the following situation:

Under date of March 15, 1927, Mr. Howard Howald was appointed at Miami University under provisional appointment as a steamfitter and plumber at that institution. Subsequently on June 23, 1927, an examination for the position of plumber and steamfitter—state universities and normal schools, was conducted and held by this Commission. Although this Commission notified Mr. Howald of this examination at the only address which we had for him, it appears that through no fault of his own he was nevertheless unformed. An eligible list of three names was certified to the appointing authority at Miami University under date of July 18, 1927, from which permanent appointment might be made succeeding Mr. Howald, still a provisional appointee. Subsequent follow up certifications made necessary on account of waivers and failures to reply to notice of certification permitted the regular approval of the payroll for Mr. Howald until September 1, 1927.

Evidently under the impression that the situation would speedily adjust itself, at least to the point of permitting Mr. Howald to continue as a provisional appointee until the next examination, through waivers and employment elsewhere of those on the eligible list, thus permitting this Commission to approve the payroll for Mr. Howald when he could again serve as a provisional appointee, the appointing authority continued to employ Mr. Howald as steamfitter and plumber at that institution but did not place his name upon the payroll submitted to this commission for approval.

However, those on the eligible list did not readily secure employment elsewhere and did not waive consideration for the position at that institution, and the salary for Mr. Howald was advanced from private funds, this Commission being unable to approve the payroll of a provisional appointee, due to the full and complete eligible list existing of three or more names.

This situation continued until May 25, 1928, at which time Mr. Howald did compete in an examination, held by this Commission for Miami University, and passed same but received a position on the eligible list too far down on the list to receive certification as one of the first three. Subsequently, however, under date of July 16, 1928, Mr. Howald's position on the eligible list was improved, through waivers and appointments elsewhere, to the point where he became one of the first three on the eligible list and permanent appointment was sent to this Commission under date of July 18, 1928. Following his permanent appointment a voucher was submitted for the approval of this Commission from Miami University for Mr. Howald as plumber and steamfitter for the nine months period ending May 31st in the sum of \$990.00.

Does this Commission have the authority under Section 486-21 to certify to such payroll that the person named therein has been appointed or is being employed in pursuance of the Civil Service Laws of Ohio and the rules adopted thereunder?”

Without recapitulating at length the facts stated in your communication it appears that on March 15, 1927, Mr. Howald was employed as a steam fitter and plumber

at Miami University under a provisional appointment made by the appointing authority of said institution; and that he served under said appointment and was paid for his services on monthly payrolls approved by your department up to and including August 31st, 1927, at which time there was in the hands of the appointing authority of said institution an eligible list from which a permanent appointment of a person other than Mr. Howald could have been made to said position. It further appears that although the eligible list certified to the appointing authority of Miami University on July 19, 1927, thereafter remained intact, no appointment was made therefrom, but that Mr. Howald was permitted to continue in the service of said institution in the position to which he had been provisionally appointed.

The voucher which has been submitted for your approval is for the services of Mr. Howald in said position from September 1, 1927, to May 31, 1928, inclusive, during which time he did not have any lawful status as an employe of the institution, provisional or otherwise.

The first paragraph of Section 486-14, General Code, makes provision for a provisional appointment in the classified civil service of the state in a proper case, but it is therein specifically provided that:

“Such provisional appointment shall continue in force only until regular appointment can be made from eligible lists prepared by the commission, and such eligible lists shall be prepared within ninety days thereafter.”

On the facts stated in your communication a regular appointment to the position in question could have been made at any time after the eligible list for said appointment was submitted to the appointing authority on July 19, 1927, and the fact that such appointing authority neglected to make any regular appointment to this position from said eligible list could not have the effect of continuing indefinitely the status of Mr. Howald as a provisional appointee. This was apparently recognized by the authorities of said institution in their failure to include the name of Mr. Howald in the monthly payroll of the institution during the period of time here in question. The status of a provisional appointee could be continued beyond the period of ninety days mentioned in the provision of paragraph one of Section 486-14, General Code, above quoted, by the failure of your department to certify an eligible list from which a regular appointment to the position could be made; but I do not think it can be contended that the status of a provisional appointee can be continued by the mere failure of the appointing authority to make a regular appointment from an eligible list submitted to such appointing authority for said position.

Inasmuch as under the provisions of Section 486-21, General Code, you are not authorized to approve any estimated payroll or account for the salary or compensation for the services of any person in a position in the classified civil service of the state, unless you find that such person is employed in pursuance of the civil service act and the rules of your department adopted thereunder, I am of the opinion that you are not authorized to approve the voucher here in question.

Respectfully,
EDWARD C. TURNER,
Attorney General.