

690.

CLASSIFIED CIVIL SERVICE EMPLOYEES, RESIGNATION
WITHDRAWAL, WHEN — ACT OF RELINQUISHMENT
NECESSARY.

SYLLABUS:

1. *Classified employee under Civil Service may resign his employment by manifesting his intention to so resign, it may be prospective in operation and in such case, when no act of relinquishment of duty appears, the resignation may be withdrawn before its effective date and the employe is still so employed.*

2. *To constitute complete and operative resignation of public officer, there must be a relinquishment of part of term accompanied by an act of relinquishment.*

COLUMBUS, OHIO, June 2, 1937.

The State Civil Service Commission, Columbus, Ohio.

GENTLEMEN:

You have requested my opinion in your letter of recent date which reads as follows:

“On the 31st day of March, 1937, a classified employe tendered to his appointing authority a written resignation from his classified position, said resignation to take effect on the first day of June, 1937. He did not relinquish his position at the time of tendering said resignation, but has since continued to function in the position, and he subsequently under date of May 5, 1937, and prior to the effective date of his resignation, desired to continue in said position and withdraw, recall and rescind the resignation.

We desire to respectfully request your opinion:

(1) As to whether a resignation of a civil service employe, effective at some future date and accepted by the appointing power prior to the effective date of same, where the incumbent remains in his official position pending such date, can be withdrawn without the consent of the appointing authority;

(2) Whether such a resignation effective at some future date, which has not been accepted or acted upon by the appointing authority, can be withdrawn at the discretion of the employe, without the consent of the appointing authority; and,

(3) Would the fact that the resignation was not voluntarily submitted, but was upon the request of the appointing authority, and was submitted by the employe under a misapprehension of his rights under the Civil Service Laws, in any way affect the situation?

I note the following facts from your letter :

(1) The classified employe did tender his resignation in writing to his appointing authority on March 31, 1937.

(2) The resignation was prospective in operation i. e., effective on June 1, 1937.

(3) The classified employe did not relinquish his position but continued to function.

(4) The employe gave notice under date of May 5, 1937, that he desired to continue in said position and withdraw, recall and rescind his resignation.

It does not appear that the appointing authority accepted the resignation expressly.

The Civil Service law is silent on the matter of resignations and I must assume that the resignation here is closely akin to any other sort of resignation. By Section 486-17a, General Code, it is provided that the "tenure of every officer, employee or subordinate in the classified service of the state, counties * * * shall be during good behavior and efficient service." It is further provided that he may be removed for incompetency, inefficiency, dishonesty, etc., or any other failure of good behavior or neglect of duty. When any such officer or employe is removed he shall be entitled to receive a copy of the order or removal with the reasons and the employe may file an explanation with the Civil Service Commission. The employe may then file an appeal with the State Civil Service Commission within ten days of removal and the commission shall appoint a trial board to hear the appeal within thirty days and it may affirm, disaffirm or modify the decision of the appointing authority and such decision shall be final.

The situation of a classified employe under the Civil Service law is somewhat different than an individual in private employment because he cannot be dismissed for mere whim or caprice. The classified employe has a right to retain his employment or office so long as his behavior is good and he gives the appointing authority efficient service. In private employment the employe may be discharged at any time the employer so desires. The classified employe has a peculiar right to his employ-

ment which might be closely akin to a property right therein so long as he properly complies with the law.

The employee also has a right to voluntarily give up his employment in the classified service. It cannot be said that he could be made to work if he did not so desire. The employee must therefore have the right of resignation or have the right to summarily quit his employment.

In the case presented the employee filed his resignation, effective at a future date, evidently to make it easier for the appointing authority to replace him with a proper substitute. This is what appears at first glance, but then it is noticed the employee decided that he did not want to resign and before its effective date he gave notice to the appointing authority to that effect and wanted to recall or rescind his resignation.

I must assume that the tender of resignation was a valid one and the recall or rescission was a valid one, if it had any legal effect.

The only section of the Civil Service law that would involve a resignation is the second paragraph of Section 486-16, General Code, which says in part:

“Any person * * * under the classified service who has been separated from the service without delinquency or misconduct on his part *may* * * * be reinstated within one year from the date of such separation to a vacancy in the same or similar office or position in the same department.”

This paragraph seems to say that after a resignation or a voluntary separation from the service such person resigning or voluntarily giving up his office or position may be reinstated within one year.

It is noted that the last sentence of Section 486-27, General Code, reads:

“*Nor shall any person, by means of threats or coercion, induce or seek to induce any one in the classified service to resign his position or waive his right to certification, appointment or promotion.*”

If in this case the appointing authority procured the resignation of the employee through threats or coercion or brought pressure to bear for political influence or power the employee could file charges against the appointing authority, which would be punishable under Section 486-28, General Code.

The intent and purpose of the Civil Service Law of Ohio is clear and unquestionable in that the classified service shall be divorced from politics to every degree possible.

A search of the authorities reveals the case of *State ex rel. Staley vs. City of Lakewood, et al.*, 47 O. App., 519, decided May 7, 1934. In this case the relator filed an original action in mandamus seeking to compel his reinstatement as a police officer of Lakewood. The relator filed his resignation with the Chief of Police on December 7, 1933, to become effective December 15, 1933, and on December 14, 1933, he canceled and withdrew his resignation by informing the Chief of Police and the Mayor that he did not desire to resign and demanded the return of his resignation which they refused to do.

The third, fourth, fifth and sixth branches of the syllabus are as follows:

"3. To constitute complete and operative resignation of public officer, there must be intention to relinquish part of term, accompanied by act of relinquishment.

4. Officer's written resignation, delivered to board or officer authorized to receive it, is prima facie, but not conclusive, evidence of his intention to relinquish office.

5. Officer's resignation to take effect in future may be withdrawn before effective date thereof even against will of body which has accepted it.

6. City police officer, declaring intention to relinquish position at future date in letter of resignation, *held* entitled to withdraw resignation before such date, in absence of act of relinquishment of position (Section 486-16, General Code)."

This case is on all fours with the subject of your inquiry, and it is my opinion it should be followed as the latest pronouncement of the law involved in this case.

It is my opinion therefore that your first and second inquiry is therefore answered, and regarding your third inquiry, it would make no difference that the employee was under a misapprehension of his rights under the Civil Service Law.

Respectfully,

HERBERT S. DUFFY,

Attorney General.