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1. WELFARE, COUNTY DIRECTOR OF—NOT AN ASSISTANT WITHIN MEANING OF SECTION 486-8(a), 8, G. C.—NOT EXEMPT FROM CLASSIFIED SERVICE.
2. POSITION NORMALLY IN CLASSIFIED SERVICE—MAY NOT BE CLAIMED EXEMPT FROM CLASSIFIED SERVICE AFTER ELIGIBLE LIST CREATED FOR POSITION, WHERE OPPORTUNITY EXISTED TO CLAIM EXEMPTION.

SYLLABUS:

1. A County Director of Welfare is not an "assistant" within the meaning of Section 486-8(a), 8, of the General Code of Ohio, and may not therefore be claimed exempt from the classified service.

2. A position normally within the classified service may not be claimed exempt from the classified service after an eligible list has been created for such position, where an opportunity existed prior to the creation of such eligible list to claim such exemption.

Columbus, Ohio, November 27, 1946

Hon. Ralph J. Bartlett, Prosecuting Attorney
Columbus, Ohio

Dear Sir:

In your request for my opinion you outline the following factual situation:

"A" was appointed as Poor Relief Director of Franklin County on February 1, 1945, and was appointed County Director of Welfare of said county on February 1, 1946. A competitive civil service examination for the position of County Director of Welfare was held on September 27, 1946, at which time "A" was examined and, as the result of such examination he was placed eighth on the eligible list.

You have requested my opinion as to whether the county commissioners may now claim the position of County Director of Welfare as exempt from the classified civil service under the provisions of Section 486-8 (a), 8, of the General Code of Ohio, and appoint "A" to said position.

Section 486-8 of the General Code, provides in so far as applicable to the existing situation, as follows:

“(a) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required in this act: * * *

8. 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. * * *”

My immediate predecessor has held in 1943 Opinions of the Attorney General, No. 6335, page 492, that:

“The position of county director of welfare created under the provisions of Section 2511-1, General Code, is in the classified civil service.”

Therefore, unless under the provisions of Section 486-8 (a), 8, said position can be claimed as an exemption from the classified civil service, it must be treated as within the classified civil service.

It is obvious that the County Director of Welfare is not a secretary, nor is he a clerk or personal stenographer for the county commissioners and it is therefore necessary to determine whether he may properly be designated as an “assistant” to such county commissioners. It is pertinent, therefore, to examine the provisions of Section 2511-1 et seq. of the General Code of Ohio, under authority of which county departments of welfare are created. Section 2511-1 reads in part as follows:

“The county commissioners of any county may by a resolution which has been unanimously adopted, establish a county department of welfare which, when so established, shall be governed by the provisions of this act. Such department shall function from and after the date fixed in such resolution, which date shall be no less than thirty days nor more than ninety days after the adoption of such resolution, but not before the first day of January, 1944. The county department of welfare shall consist of a county director of welfare appointed by the board of county commissioners, and such assistants and other employees as may be deemed necessary for the efficient performance of the welfare service of the county. * * *”

Section 2511-2 provides in part as follows:

“Under the direction of the board of county commissioners, the county director of welfare shall have full charge and control of the county department of welfare. * * *”

My immediate predecessor has held in 1943 Opinions of the Attorney General, No. 6552, page 696, that if a county department of welfare is properly established by a board of county commissioners pursuant to Section 2511-1, General Code, such department may not thereafter be abolished by the board of county commissioners. This holding would appear to militate against the proposition that the county commissioners have such control over the County Director of Welfare as would constitute him an “assistant” within the meaning of Section 486-8 of the General Code. Furthermore, in a former opinion of this office, I have stated in 1945 Opinions of the Attorney General, No. 130, page 94:

“It will be noted that the broad powers which are given to the director are to be exercised ‘under the direction of the board of county commissioners’. In my opinion, however, this language does not indicate an intention on the part of the legislature to give the county commissioners any executive authority in the management of the department, but rather to give them a status somewhat like that of a city council, whose duties are specifically described in the statute as being legislative only, coupled with the obligation to pass ordinances regulating the various departments and to provide funds for their operation.”

Thus, if the county commissioners do not have executive authority over the county department of welfare, and such department has a high degree of autonomy, as is indicated by the opinions of this office above cited, it cannot be said that the Director of such Department of Welfare can properly be described as an “assistant”, within the meaning of Section 486-8 of the General Code. Therefore, it is my opinion that the position of County Director of Welfare cannot be claimed as an exemption from the classified civil service under the provisions of Section 486-8 (a), 8.

In this instance, however, it is not necessary to depend alone upon the reasoning and conclusions above set forth in order to conclude that the County Director of Welfare may not be claimed exempt from the classified civil service by the county commissioners. Pursuant to the rule-making power vested in the State Civil Service Commission of Ohio

by Section 486-8, the State Civil Service Commission of Ohio has adopted Rule III, relative to the classified and unclassified service, which provides in part 2b, thereof :

“After a proper eligible list has been created by competitive examination to fill any position in the classified service, no exemption under the provisions of paragraph 8, sub-section (a), of Section 486-8 of the Civil Service Law may thereafter be claimed so long as a full and complete eligible list exists and so long as such list was created subsequent to an opportunity to claim such position exempt when no list existed.”

It appears from the facts set forth in your request, that “A” was appointed to the position of County Welfare Director some months prior to the creation of the eligible list as the result of the civil service examination held on September 27, 1946, and that therefore an opportunity existed to claim the position of County Director of Welfare as exempt from the classified service prior to the existence of the eligible list, if it be assumed that, contrary to my opinion hereinabove expressed, the position of County Director of Welfare could ever have been claimed as exempt from the classified service under the provisions of Section 486-8 (a), 8, of the General Code. Therefore, in any event, under the facts as stated, the county commissioners are precluded by virtue of paragraph 2-b, of Rule III of the State Civil Service Commission of Ohio, from claiming the position of County Director of Welfare as exempt from the classified service.

In specific answer to your inquiry, it is my opinion :

1. A County Director of Welfare is not an “assistant” within the meaning of Section 486-8 (a), 8, of the General Code of Ohio, and may not, therefore, be claimed exempt from the classified service.
2. A position normally within the classified service may not be claimed exempt from the classified service after an eligible list has been created for such position, where an opportunity existed prior to the creation of such eligible list to claim such exemption.

Respectfully,

HUGH S. JENKINS
Attorney General