

2527

1. EMPLOYES—STATE—CLASSIFICATION — DIRECTOR OF PUBLIC WELFARE—MAY ESTABLISH TABLE OF PERSONNEL ORGANIZATION—EACH INSTITUTION AND DIVISION WITHIN DEPARTMENT—MAKE OWN CLASSIFICATION—TABLE AND CLASSIFICATION SHALL NOT AFFECT OFFICIAL AND STATUTORY CLASSIFICATION—ESTABLISHED BY CIVIL SERVICE COMMISSION—SECTION 486-7a ET SEQ., G. C.
2. IF DIRECTOR ATTEMPTS TO REASSIGN DUTIES, RESPONSIBILITIES, QUALIFICATIONS AND REQUIREMENTS OF EMPLOYES, NEW POSITIONS MUST BE RECLASSIFIED BY COMMISSION AND THE RECLASSIFICATION SHALL PREVAIL.
3. WHERE CLASSIFICATION BY COMMISSION AS ASSISTANT SUPERINTENDENT HAS BEEN MADE, EMPLOYEE SHALL BE SO CLASSIFIED AND MAY NOT BE REMOVED AND REPLACED EXCEPT AS PROVIDED BY LAW.
4. WHERE COMMISSION CLASSIFIED EMPLOYES WITH RESULTANT INCREASE IN PAYROLL IN EXCESS OF APPROPRIATIONS, THE DIRECTOR MAY FURLOUGH, WITHIN HIS DISCRETION, SUCH EMPLOYES AS HE FINDS IT NECESSARY, TO KEEP PAYROLL WITHIN APPROPRIATIONS—FUNDS OTHERWISE AVAILABLE.

SYLLABUS:

1. The Director of Public Welfare may establish a table of personnel organization for each institution and division within his department and make his own classification, but such table and classification shall in no manner affect the official and statutory classification established by the Civil Service Commission under the provisions of Section 486-7a et seq. of the General Code.

2. If the Director of the Department of Public Welfare, after the employes of such department have been classified by the Civil Service Commission, attempts to reassign duties, responsibilities, qualifications and requirements to such employes, such new positions resulting from such reassignments, must be reclassified by the commission, and such reclassification shall prevail for the purpose intended by Section 486-7a et seq. of the General Code.

3. Where a position held by an employe of the state in an institution within the Department of Public Welfare is referred to and classified by the Civil Service Commission as that of an assistant superintendent, and such employe holding such position shall be classified as assistant superintendent, he shall not be removed and replaced by another except as provided by law in such instances.

4. Where under the provisions of Sections 486-7a et seq. of the General Code the Civil Service Commission in classifying the employes of a department there is a resultant increase in the payroll in excess of appropriations, the Director may furlough, within his discretion, such employes as he finds it necessary, in order to keep the payroll within the appropriations unless funds are otherwise available.

Columbus, Ohio, November 21, 1950

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Section 1835 of the General Code of Ohio provides, in part:

‘The director of public welfare shall appoint such employes as may be deemed necessary for the efficient conduct of the department, prescribe their titles and duties, except as otherwise provided by law.’

Section 1842 of the General Code of Ohio provides, in part:

‘The director of public welfare, after conference with the managing officer of each institution and the chief of the division within the department in which such institution is located shall determine the number of employes to be appointed.’

Under the provisions of Section 1359-11 of the General Code, it is provided, in part:

‘He (Chief of the Division of Aid for the Aged) shall appoint all necessary assistants, investigators, clerks and other

employees, and fix their duties, subject to the approval of the director of public welfare.'

Section 154-19, General Code, provides, in part:

'Each department is empowered to employ, subject to the civil service laws in force at the time the employment is made, the necessary employees, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation.'

Section 486-7a of the General Code fixes the classifications for all positions, offices, and employments in the state service, and this section authorizes the civil service commission to "allocate each present position, office, or employment . . . to the appropriate class of positions, offices and employments among those set forth above on the basis of the duties, responsibilities, qualifications, and requirements of such positions . . ."

It appears from the foregoing sections that the duties and responsibilities of the Director of Public Welfare and those of the Civil Service Commission, as they relate to the number of employees and their duties, may be in conflict and we therefore desire your opinion on the following:

1. Under the apparent authority of Section 1835 and 1842 of the General Code, the undersigned as Director of Public Welfare has established, by Executive Order, a table of personnel organization for each institution and Division within the Department, in which the gross number of employees to be employed and the number of employees to be employed in each classification have been definitely fixed. Has the Director of Welfare, under the law as it now exists, authority to establish such a table of personnel organization?

2. If the Director of Public Welfare has authority to establish a table of personnel organization as set forth in question one above, and the Civil Service Commission, in classifying the positions of employees, increases the number of employees in a particular classification over that fixed by the Director of Welfare and in like manner reduces the number of employees in another classification in conflict with the order fixed by the Director of Public Welfare, may the Director of Public Welfare order that an employee whose classification has been changed by the Civil Service Commission and for which no position exists in the table of organization as fixed by the Director of Public Welfare, be re-assigned duties consistent with the duties of the position for which he was employed?

3. At one of our institutions, the table of organization does not contain the position of Assistant Superintendent. Does the Civil Service Commission have authority under the law in classifying employees to classify one of the employees at this institution

as Assistant Superintendent, and thus prevent the appointing authority from selecting another person for such a position if it must be created?

4. If the State Civil Service Commission, in reclassifying employes of the Department, creates positions in a higher classification in excess of the number for such classification as fixed by the Director of Public Welfare in the table of personnel organization and for which the Department has no appropriated funds to meet the increase in payroll caused by such classification, may the Director of Public Welfare either abolish certain reclassified positions or furlough the incumbents thereof in order to bring the payroll expenditures of the Department within the amount of funds appropriated by the Legislature for personal service."

Considering Section 1359-11 of the General Code referred to and quoted in part in your request, I believe it will suffice to state that there appears to be no conflict between such section and Section 486-7a et seq., General Code. The former provides for the appointment and fixing of duties of employes in the Division of Aid for the Aged by the Chief of such Division, subject to the approval of the Director of Public Welfare, and the law applicable to classification and salaries of state employes applies to such Division with the same force and effect as it applies to all other employes of the state.

Said Section 1359-11 is set forth in part in your request as follows:

"He (Chief of the Division of Aid for the Aged) shall appoint all necessary assistants, investigators, clerks and other employes, and fix their duties, subject to the approval of the director of public welfare."

You also refer to Section 154-19, and set forth same in part as follows:

"Each department is empowered to employ, subject to the civil service laws in force at the time the employment is made, the necessary employes, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation."

Inasmuch as Section 486-7a et seq. applies with equal force and effect to all employes of the state, except those specifically excluded, there appears to be no conflict here and the classification and fixing of pay is now controlled by said Section 486-7a et seq. Said Section 154-19 is a part of the administrative code and in no manner are the employes therein referred to among those specifically excluded in Section 486-7a.

I believe that Sections 154-60e and 1890-11 of the General Code, referred to in your supplementary letter to this office dated October 6, 1950, can likewise be disposed of in the same manner as covered by the above remarks. For the purpose of brevity, your supplementary letter is not herein set forth.

I will consider the questions in the order in which they have been set forth in your request, the first one being as follows:

“Under the apparent authority of Section 1835 and 1842 of the General Code, the undersigned as Director of Public Welfare has established, by Executive Order, a table of personnel organization for each institution and Division within the Department, in which the gross number of employes to be employed and the number of employes to be employed in each classification have been definitely fixed. Has the Director of Welfare, under the law as it now exists, authority to establish such a table of personnel organization?”

So much of Section 1835, General Code, as is pertinent reads as follows:

“The director of public welfare shall appoint such employes as may be deemed necessary for the efficient conduct of the department, prescribe their titles and duties, except as otherwise provided by law.”

Section 1842, General Code, reads as follows:

“Subject to the provisions of law and the rules and regulations of the department of public welfare, each of the institutions under the jurisdiction of the department shall be under the control and management of a managing officer to be known as a superintendent or by other appropriate title. Such managing officer shall be appointed by the director of the department of public welfare, after consultation with the head of the respective division, and shall be in the classified civil service.

The managing officer, under the director of public welfare, shall have entire executive charge of the institution for which he is appointed, except as otherwise may be provided by law. Subject to civil service rules and regulations he shall select and appoint the necessary employes and he or the director of the department of public welfare may remove such employes for cause. A report of all appointments, resignations and discharges shall be filed with the department at the close of each month.

The director of public welfare, after conference with the managing officer of each institution and the chief of the division

within the department in which such institution is located, shall determine the number of employes to be appointed."

(Emphasis added.)

It appears to me that the provisions of Section 1835 as set forth applies to the department headquarters and necessary personnel therein necessarily established and maintained for the over-all administration of the Department of Public Welfare. It appears clear that the Director shall appoint such employes as he deems necessary for the over-all administration of the Department, assign to them their duties and for his own organization purposes he may give them such titles as he deems fit. There appears to be no requirement in law, for organization purposes, making it mandatory for him to give particular titles to such department employes. However, when he prescribes the employes' duties, responsibilities, qualifications and requirements it then becomes the duty of the State Civil Service Commission to appraise and evaluate such positions and classify them in conformity with the provisions of Section 486-7a et seq., General Code. The first sentence of Section 486-7a reads as follows:

"All positions, offices and employments in the state service, except those hereinafter excluded, are classified hereby as follows:"

Continuing in said section the legislature set up over seven hundred classification titles with corresponding classification numbers. The legislature then continued with the following language:

"* * * As soon as possible after the effective date of this act, and, in no event later than January 1, 1950, the state civil service commission shall prepare specifications descriptive of the duties, responsibilities and desirable qualifications of each of the above classifications and shall allocate each present position, office or employment, paid in whole or in part by the state of Ohio, to the appropriate class of positions, offices and employments among those set forth above on the basis of the duties, responsibilities, qualifications and requirements of such positions, offices or employments *in conformity with the report of the public administration service.*"

(Emphasis added.)

Sections 486-7b and 486-7c, General Code, set up the pay ranges into which state employes shall fall and the class numbers and class titles which fall within such pay ranges.

In the last sections referred to there is no authority whatever for the Civil Service Commission to make appointments, neither does it in any manner have authority to determine the number of employes in any classi-

fication except as a result of its classification. As stated heretofore, the Commission merely takes the various positions and, according to the duties, responsibilities, qualifications and requirements, classifies and places them in the pay range in accordance with Section 486-7a et seq. The Civil Service Commission classifies all persons now in the employ of the state, except those which are specifically excepted, regardless of when they were appointed, by whom they were appointed, or under what authority they were appointed. This is the authority and procedure followed by the Commission as to state employes whether they are appointed by the Director under Section 1835, are managing officers appointed under the provisions of Section 1842, selected and appointed by the managing officers under the provisions of Section 1842, or under the provisions of any other sections. All personnel of the Department of Public Welfare are appointed and employed under either the provisions of Sections 154-19, 154-60e, 1359-11, 1890-11, 1835 or 1842, except the Director who is appointed by the Governor. The number of employes so appointed necessarily are limited by the appropriation made by the legislature and of course limited in number necessary for the proper functioning of the Department in carrying out the duties devolving on it.

Therefore in specific answer to your first question it is my opinion that the Director of Welfare may establish a table of personnel organization for each institution in the Department of Public Welfare, but such personnel shall occupy such positions in statutory classifications, for payroll purposes, as determined by the Civil Service Commission, based on the duties, responsibilities, qualifications and requirements assigned to them by the Director.

It appears from your second question that there is confusion in assuming that the Director makes classifications within the meaning of Sections 486-7a et seq., General Code. I wish again to point out that classification of employes within the intent and meaning of such sections is not the prerogative of any authority other than the Civil Service Commission. If the duties, responsibilities, qualifications and requirements are such that they fit the position held in a certain statutory classification, that is the classification into which they fall and in which they must be placed by the Commission.

The last part of your second question reads as follows :

“* * * may the Director of Public Welfare order that an employe whose classification has been changed by the Civil Service Com-

mission and for which no position exists in the table of organization as fixed by the Director of Public Welfare, be re-assigned duties consistent with the duties of the position for which he was employed?"

Here again there seems to appear a confusion with respect to the title and classification set up by the Director in his table of organization for administrative purposes and the statutory classification and classification title set up by the Civil Service Commission as provided and required by Section 486-7a, General Code.

It certainly must be presumed that the assignment of duties, responsibilities, qualifications and requirements to the various employes in the Department is done in order that the over-all functioning of the Department is complete. When a survey of the various positions is made and forwarded to the Civil Service Commission the Commission allocates such position to the proper statutory classification based on the duties, responsibilities, qualifications and requirements assigned to such position. If the statutory classification to which a position is allocated differs from a title or classification set up by the Director in his table of organization the classification so given by the Commission shall prevail in each instance in so far as duties, responsibilities, qualifications, requirements and pay are concerned. Such classification is the only statutory one provided for determination of fixed employe status. Whether or not such classification changes the number of employes or positions in a classification set up by the Director in his table of organization is immaterial inasmuch as all necessary duties are presumed to be covered and performed and each employe is in his or her proper pay range within the intent and meaning of Section 486-7a et seq. If such classification leaves a classification set up by the Director in his table of organization without employes then I must conclude that in so far as statutory classifications are concerned they shall control in so far as duties, responsibilities, qualifications, requirements and pay are concerned. The very fact that the Commission in allocating the employes to classifications and resultant pay ranges leaves a classification arbitrarily set up by the Director without positions does not authorize said Director to insist on his organization table to prevail. In order to keep employes in a table of organization classification found to be without positions or employes after the Commission has made its classification the Director may re-assign duties, responsibilities, qualifications and requirements, but after doing so such positions with new duties, responsibilities, qualifications and requirements shall be referred to the

Commission for its re-evaluation and statutory classification which may or may not bring such newly created positions into a classification as set up in the Director's table of organization. This is true whether such employes are appointed by the Director under authority of Section 1835 or appointed under authority of Section 1842, or under any other section.

Therefore, in specific answer to your second question, it is my opinion that classification of employes by the Civil Service Commission is in no manner controlled by a table of organization set up by a department head, and any attempt to re-assign duties and responsibilities for the mere purpose of keeping classifications in organization tables in existence can not affect the employes' legal status. Such new positions created by such re-assignments of duties, responsibilities, qualifications and requirements must be reclassified by the Commission, and its re-classification shall prevail for the purpose intended by Section 486-7a et seq. General Code.

Your third question reads as follows:

"At one of our institutions, the table of organization does not contain the position of Assistant Superintendent. Does the Civil Service Commission have authority under the law in classifying employes to classify one of the employes at this institution as Assistant Superintendent, and thus prevent the appointing authority from selecting another person for such a position if it must be created?"

The Civil Service Commission under Section 486-7a et seq. has no other alternative than to classify employes on the basis of the survey presented to it setting forth the duties, responsibilities, qualifications, requirements and length of service which go with the position filled by such employes. If after an evaluation of such duties, responsibilities, qualifications and requirements the Commission deems that the position is that of an assistant superintendent, then it can not do otherwise than classify the employe holding such position as an assistant superintendent. Such assistant superintendent can not be demoted, removed or transferred without cause for the mere purpose of appointing another to his position. Such a procedure would be a violation of the intent of the legislature to give greater security to state employes in their status of employment.

The purpose of classification and pay range adjustment of state employes is not for the purpose of creating positions for individuals, but is to place all employes on an equitable footing relative to their duties re-

sponsibilities, qualifications, requirements and length of service, and if an employe is performing the duties of an assistant superintendent is the niche into which his position falls even though theretofore he was called a clerk and was receiving the salary of a clerk.

In specific answer to your third question it is my opinion that, where a position held by an employe of the state is referred to the Civil Service Commission for classification and the duties, responsibilities, qualifications and requirements assigned to such position by the department head require that such position be classified as assistant superintendent, the employe holding such position shall be classified as assistant superintendent and he shall not be removed and replaced by another except as provided for by law in such instances.

Your fourth question reads as follows:

“If the State Civil Service Commission, in reclassifying employes of the Department, creates positions in a higher classification in excess of the number for such classification as fixed by the Director of Public Welfare in the table of personnel organization and for which the Department has no appropriated funds to meet the increase in payroll caused by such classification, may the Director of Public Welfare either abolish certain reclassified positions or furlough the incumbents thereof in order to bring the payroll expenditures of the Department within the amount of funds appropriated by the Legislature for personal service.”

It is elementary law that no official or employe of the state can obligate the state for the payment of money until and unless funds are appropriated and set aside for the purpose intended. This strict requirement has more than once made it necessary for projects to be cancelled and abandoned and for drastic curtailment of expenditures to be made by public officials. Such requirements not only apply to contracts, but likewise to the hiring and retention on the payroll of state employes.

Therefore, it appears to me, and I so advise that, where, under the provisions of Section 486-7a, et seq., General Code, the Civil Service Commission in classifying the employes of a department there is a resultant increase in the payroll in excess of appropriations, the Director has no alternative than to furlough, within his discretion, such employes as he finds it necessary, in order to keep the payroll within the appropriations, unless funds are otherwise available.

I suggest that the furlough should be resorted to rather than abolishment of a position on the supposition that such a circumstance might be a temporary one.

Respectfully,

HERBERT S. DUFFY,
Attorney General.