

It seems that there has been an intentional omission to clothe any official or officials with authority to eliminate the penalty for non-payment of taxes. One commentator upon this apparent lack of authority says:

"The legislature has, evidently, thoroughly comprehended the danger of clothing these (officials) with power to reduce or obliterate penalty, etc.—it knew the pressure that would be brought to bear upon them, and the temptations and opportunities they would be required to withstand. No specific reference need be made to them, as they will at once suggest themselves to any one having the slightest knowledge of public affairs."

Specifically referring to your question number two, I am of the opinion that the same must be answered in the negative.

Likewise referring to your questions numbers one and three, and adhering to the former ruling of this department, I am of the opinion that questions one and three should each be answered in the affirmative.

Respectfully,
C. C. CRABBE,
Attorney General.

233.

FISH AND GAME DIVISION—ASSISTANT CHIEF—GAME PROTECTORS
—IN CLASSIFIED SERVICE—TENURE FOR LIFE DURING GOOD
BEHAVIOR.

SYLLABUS:

Under existing laws the Assistant Chief of the Fish and Game Division in the Department of Agriculture and Game Protectors, are in the classified service as defined in section 486-8 of the Civil Service Laws and their tenure of office is for life during good behavior as provided in section 486-17a G. C.

COLUMBUS, OHIO, April 13, 1923.

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

GENTLEMEN:—You have requested my opinion as follows:

"Section 486-8, sub-paragraph (a) specifies the positions in the state service which shall be in the unclassified service. Sub-paragraph (b) states that the classified service shall comprise all persons in the employ of the state not specifically included in the unclassified service. Section 1439 of the General Code, 108, Part 1, Ohio Laws, found on page 598 reads in part as follows:

"The Chief of the Division of Fish and Game, Assistant Chief, Lake Erie Supervising Protector and each Fish and Game Protector shall hold his office for a term of two years unless sooner removed by the Secretary of Agriculture."

Section 486-17 (a) of the Civil Service Law reads in part as follows :

“The tenure of every officer, employe or subordinate in the classified service of the state, the counties, cities and city school districts thereof, holding a position under the provisions of this act, shall be during good behavior and efficient service.”

The question which this Commission wishes to present is as follows :

Is the tenure of the Assistant Chief of the Division of Fish and Game and of each Fish and Game Protector in the state, for an indefinite term depending upon good behavior and efficient service or for a definite period of two years from the date of permanent appointment?”

In considering the question you present it will be helpful, if not necessary, to consider the history of the legislation relating to the Division of Fish and Game and the State Civil Service. It has been noted that the part of section 1439 G. C., to which you refer as enacted in 108 O. L., was originally section 1391, previous to the codification of the fish and game laws as enacted in 1919.

A similar section was enacted in “an act to revise and consolidate the laws relating to the appointment, powers and duties of the Commissioners of the Fish and Game” in 99 O. L., 365. Section 5 of said act provided :

“The commissioners of fish and game shall appoint a chief warden and such number of deputy state wardens and special wardens as they deem necessary. The chief warden and each deputy state warden shall hold his office *for a term of two years* unless sooner removed by the commissioners. Each special warden shall hold his office for such time as the commissioners direct and shall have the same powers and perform the same duties as a deputy state warden.”

It will be observed that this section is substantially the same as that part of section 1439, which you quote, as enacted in 108 O. L., excepting the reference to the commissioners and the substitution of the title “Chief of the Division of Fish and Game” and “Fish and Game Protectors” in place of “Chief Warden” and “Deputy State Wardens”, etc. This section was again amended by the legislature in 103 O. L., 332, but contained substantially the same provisions as formerly quoted in so far as your question is concerned. It was further given attention by the legislature in 106 O. L., 143, in “an act to create the Board of Agriculture of Ohio, etc.”

The only change in this enactment from the previous enactment was the substitution of the Board of Agriculture for the Fish and Game Commission as the appointing power of the warden and deputy state wardens. This act was passed April 21st, 1915, and approved by the Governor on the same date and filed in the office of the Secretary of State on the 22nd day of April, 1915.

In this connection it will be observed that section 486-8 G. C., which defines the unclassified and classified service, was enacted in its present form, as was section 486-17a, which provides for the life tenure of office for those in the classified service, in 106 O. L., 419. This act was passed May 27th, approved May 28th, and filed in the office of the Secretary of State on June 1st, 1915.

In noting the numerous exceptions that are made from the classified service in section 486-8, supra, no provisions have come to our attention which would

take the employes mentioned in section 1391 G. C. out of the classified service. Therefore, at this point we have section 1391 G. C., as enacted in 1915, specifically providing that the Chief Game Warden and his deputies shall serve for a term of two years. By a later enactment, the Civil Service Act, passed in the same year, it is provided that such employes are in the classified service. However, this problem is easy of solution with reference to the law as it existed on the taking effect of the later enactment. The repealing clause among other things provided that all other acts or parts of acts inconsistent therewith should be repealed.

In view of this provision, if we are correct in our assumption that employes as designated in section 1391 G. C., came within the classified service provided for by section 486-8 G. C., then section 1391 G. C. in so far as it related to the two-year term of office was repealed by the Civil Service Law as enacted in 106 O. L. It is understood that following the enactment of section 486-8 G. C., that the employes which you mention in the Department of Agriculture were considered by the Civil Service Commission and by the Department of Agriculture within the classified service.

However, the Fish and Game Laws were recodified in 108 O. L., in an act found on page 577, which of course gives rise to your question. Section 1439 G. C., as enacted therein, provides:

"For the purpose of carrying into effect the provisions of the preceding section there shall be appointed a chief of the division of fish and game, and assistant chief, a Lake Erie supervising protector and such number of fish and game protectors and special fish and game protectors as the board of agriculture may prescribe. The chief of the division of fish and game, assistant chief, Lake Erie supervising protector and each fish and game protector shall hold his office for a term of two years, unless sooner removed by the secretary of agriculture. Each special fish and game protector shall have the same powers and perform the same duties as a fish and game protector."

It is clear that the above section as last enacted defines the tenure of office of the Chief of the Division of Fish and Game, Assistant Chief and each Fish and Game Protector to be a term of two years unless the incumbent is sooner removed by the Secretary of Agriculture. This of course is in conflict with section 486-17a G. C., which provides for the life tenure of those in the classified service.

The question now presents itself as to whether or not the Civil Service provision was repealed by implication by section 1439 G. C., as last enacted. It will be apparent from an examination of the recodification act relating to the fish and game laws that the purpose of the enactment of section 1439 G. C. was, among other things, to substitute the provisions of section 1391 G. C.

It further appears that the chief, if not the only purpose, was to designate the employes of the fish and game department by different titles than such officers had previously held. In other words, wardens became game protectors, etc., in this act. The section, of course, was renumbered to conform to its logical order on account of the recodification of the game law. It is apparent that the question of whether or not such employes should be under civil service was not specifically before the legislature. However, the rule has been definitely indicated by the Supreme Court on a number of occasions that when the language is unambiguous there is no room for construction and if the legislature has clearly expressed themselves the courts will not interfere with the language used, even though it leads to absurd results. In other words the Supreme Court has said:

"In the construction of a statute the question is, what did the legislature mean by what it said; and not what did it mean to say."

Sheu v. State, 83 O. S., 146.

On the other hand it must be remembered that it is a well established rule of the courts of this state that repeals by implication are not favored. In this connection consideration should be given to the fact that the Civil Service Commission and the Department of Agriculture made no change in reference to its policy of requiring such employes to comply with the civil service laws after the enactment of section 1439 G. C., in 108 O. L.

In State vs. Herstius, 25 C. C. N. S., 177, it was held that it is a general rule that the practical construction given a doubtful statute by the state or officers whose duty it is to carry it into execution is entitled to great weight and will not be disregarded except for cogent reasons unless it is clear that such construction is erroneous.

In Industrial Commission v. Brown, 92 O. S., 309, it was held that the administrative interpretation of a statute, while not conclusive, is to be given great weight after it has been continued for a long time and generally acquiesced in.

While the administrative ruling above referred to is not of long standing, yet in view of the policy of the legislature in the adoption of the civil service law which repealed all acts inconsistent therewith, and the further fact that the legislature has not seen fit to give attention to this legislation, notwithstanding the practical interpretation placed upon it, is entitled to some consideration in determining whether or not section 1439 G. C. repealed the civil service law by implication.

It will be further observed that the legislature has, in some instances wherein the employes were to be exempted from the classified service, expressly made such provision. If it had intended such an exemption in the enactment of section 1439 G. C. it would have been easy for such expression to have been made.

In view of the foregoing it must be said that it is somewhat doubtful as to the status of the law after the enactment of section 1439 G. C. However, your question need not be decided alone, from the status of the law after this enactment, but the administrative code of 1921 must be taken into consideration. In this enactment the former duties and powers of the Secretary of Agriculture were transferred to the Director of Agriculture as provided in section 154-42 G. C. In this act which related to the reorganization of the entire state government, the legislature of course had before it not only the laws relating to the Agriculture Department, but also those of the civil service.

Section 154-19 G. C., a part of said act, provides :

"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. Nothing in this chapter shall be construed to amend, modify or repeal the civil service laws of the state, except as herein expressly provided.

All offices created by sections 154-5 and 154-6 of the General Code shall be in the unclassified civil service of the state."

An examination of this section clearly indicates that it was the intention of the legislature to subject the employes of each department to the civil service laws excepting in those instances in which it was specifically provided otherwise. There

are other references in the act to the civil service (see section 4), and while not bearing directly upon the question, indicate that it was the intention of the legislature to uphold the civil service laws as they then existed.

In view of this situation it must be concluded that whatever doubts existed in reference to the status of the employes mentioned in section 1439 G. C., by the enactment of this section in 108 O. L. with reference to the classified service, are removed by the later provisions of the administrative code of 1921.

It will be further observed that under the provisions of 154-19 G. C., the Chief of the Division of Fish and Game is expressly placed in the *unclassified* service. Established principles of statutory construction tend to support the proposition that where the legislature has designated those as being in the unclassified service that other employes in the same department not mentioned in such provisions would be in the classified service.

Based upon the foregoing citations and discussions it is the opinion of this department that the Assistant Chief of the Division of Fish and Game and the Fish and Game Protectors as provided for in section 1439 of the General Code are subject to the provisions of section 486-17a of the Civil Service Laws of Ohio and their tenure of office is for life during good behavior.

Respectfully,

C. C. CRABBE,

Attorney General.

234.

APPROVAL, BONDS OF BETHEL TOWNSHIP RURAL SCHOOL DISTRICT, CLARK COUNTY, \$4,000.00, TO CONSTRUCT NEW PORTABLE SCHOOL HOUSE.

COLUMBUS, OHIO, April 13, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

235.

APPROVAL, BONDS OF MAD RIVER TOWNSHIP RURAL SCHOOL DISTRICT, CLARK COUNTY, \$2,500.00, TO INSTALL HEATING AND VENTILATING SYSTEM IN OAK GROVE SCHOOL BUILDING.

COLUMBUS, OHIO, April 13, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.