

school districts are not included in the operation of the civil service laws of this state.

In view of the discussion herein and the authorities cited, I am of the opinion that the officers and employes of exempted village school districts, village school districts, rural school districts and county school districts do not come within the provisions of the civil service act (Sections 486-1 to 486-31, inclusive, General Code).

Respectfully,

GILBERT BETTMAN,
Attorney General.

2258.

CITY BOARD OF HEALTH—LOCAL REGISTRAR OF VITAL STATISTICS
COMES WITHIN THE PROVISIONS OF CIVIL SERVICE LAW AND
MAY BE REMOVED BY SUCH BOARD.

SYLLABUS:

1. *The district board of health of a municipality is authorized to remove a local registrar of a city in accordance with the provisions of the civil service laws.*

2. *A local registrar of a city is included in the classified civil service of the State of Ohio.*

COLUMBUS, OHIO, August 23, 1930.

HON. CHARLES A. NEAL, *Director of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date in which you request my opinion on the following questions:

“1. Can a local registrar of vital statistics be removed from his office by action of a city board of health?

2. Is the position of local registrar of vital statistics in the classified civil service (a) municipal, (b) state, so that an appointment to this office would have to be made from an eligible list, or later take a civil service examination if a provisional appointment is made?”

I will discuss these questions in reverse order for reasons which will appear in the discussion that follows:

Section 201, General Code, provides in part as follows:

“In villages the village clerk and in townships the township clerk shall be the local registrar, and in cities the city board of health shall appoint a local registrar of vital statistics, and each shall be subject to the rules and regulations of the state registrar, the provisions of this chapter and to the penalties provided by law. * * * ”

You will observe that the village clerk and the township clerk are designated as the local registrar of the village and township respectively. The local registrar of a village is a village officer and the local registrar of a township is a township officer; the fact that additional duties have been imposed upon them by virtue of the provisions of the section relating to the bureau of vital statistics, does not change the status of these officers. Since these officers are elective officers, they are not included in the classified civil service of the state and a further discussion of the application of the civil service laws with respect to them is unnecessary.

The question arises at this point as to the status of the local registrar of a city, for it will be noted that Section 201, *supra*, provides that in cities the city board of health (now district board of health of a city by virtue of Section 1261-30, General Code), shall appoint the local registrar.

The Legislature in 1908 (99 Ohio Laws, 297) passed an act "To establish a bureau of vital statistics and to provide for the prompt and permanent registration of all births and deaths occurring within the State of Ohio". This act is now contained in the General Code as Sections 197 to 234, inclusive.

The nature of the duties of a local registrar of a city is set forth in a number of these sections which I will herein briefly describe.

Section 197, General Code, provides for the establishment of a state system of registering births and deaths, which shall consist of a central bureau of vital statistics and primary registration districts. It further provides that the central bureau shall be maintained at the state capital and that each city, village and township shall constitute a primary registration district; and that the Secretary of State (now the Director of Health by virtue of Section 154-43, General Code) shall have charge of such system and the general supervision of the central bureau.

Section 198, General Code, provides that the Secretary of State (now the Director of Health under the provisions of Section 154-43, General Code) shall prescribe methods, forms, blanks, etc., and shall enforce the provisions of the chapter relating to vital statistics thoroughly and uniformly throughout the state.

Section 200, General Code, provides that the state registrar shall prepare and print blank forms to be used by registrars and shall prepare and issue instructions necessary to secure the uniform observance and maintenance of a perfect system of registration. This section also authorizes the state registrar to combine two or more primary registration districts into one primary registration district.

Sections 201 and 202, General Code, provide for the appointment of deputy registrars and sub-registrars with the approval of the state registrar.

Section 1261-32, General Code, makes provision for the transmission of the original death and birth certificates by local registrars to the district health commissioner who is a deputy of the state registrar of vital statistics.

Section 234, General Code, provides that the state registrar under the direction of the Secretary of State (now the Director of Health) be charged with the thorough and efficient execution of the provisions of the act relating to vital statistics in every part of the state, and gives him supervisory powers over local registrars to the end that all requirements shall be uniformly complied with.

You will note from a reading of these sections that the primary registration districts are created as agencies of the state where the records of vital statistics are filed for the purpose of transmitting them to the central bureau of vital statistics of the state. The employes of such district merely perform ministerial duties for the central bureau of vital statistics of the state and do not act independent of the state bureau. These primary registration districts are not separate political entities, for it clearly appears that a local registrar acts as a representative for the central bureau of vital statistics of the state in a particular district and, therefore, a local registrar of a city performs state functions within a district coextensive with the limits of a municipality.

Since I have concluded that the local registrar of a city has a state position, I now come to an examination of the sections relating to the civil service laws of this state to determine whether or not a local registrar of a city is included in the classified civil service of the state.

Section 486-1a, General Code, provides in part as follows:

"1. The term 'civil service' includes all offices and positions of trust or

employment in the service of the state and the counties, cities and city school districts thereof.

2. The 'state service' shall include all such offices and positions in the service of the state, or the counties thereof, except the cities and city school districts.

3. The term 'classified service' signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof.

* * * . "

Section 486-8, General Code, provides that "the civil service of the State of Ohio and the several counties, cities and city school districts thereof shall be divided into the unclassified service and the classified service."

This section enumerates certain positions which shall not be included in the classified service, and, after making such enumeration in the unclassified service, provides further as follows:

"The classified service shall comprise all persons in the employ of the state, the several counties, cities, and city school districts thereof, not specially included in the unclassified service, to be designated as the competitive class and the unskilled labor class. The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer or reduction, as provided in this act, and the rules of the commission, by appointment from those certified to the appointing officer in accordance with the provisions of this act."

I shall not enumerate the positions in the unclassified service. It is sufficient to say that the position of a local registrar of vital statistics of a city is not included in the unclassified service. It follows, therefore, that he is included in the classified service of the state.

Now coming to your first inquiry as to whether or not a local registrar of vital statistics can be removed from his office by action of a city board of health, your attention is directed to Section 203, General Code, which provides in part as follows:

" * * * A local or sub-registrar who fails to efficiently discharge the duties of his office shall be forthwith removed from office by the secretary of state, in addition to other penalties which may be imposed by law."

This section was enacted in 1908 (99 Ohio Laws, 297), as I have hereinbefore set forth, as a part of the act to establish a bureau of vital statistics. And since I have concluded that a local registrar of a city is in the classified civil service of the state, it becomes necessary to examine the civil service statutes to determine whether or not the provisions of these sections are in conflict with the civil service statutes.

Section 486-17, General Code, provides in part as follows:

"No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against by an appointing officer for religious or political reasons or affiliations. In all cases of reduction, lay-off, or suspension of an employe or subordinate, whether appointed for a definite term or otherwise, the appointing authority shall furnish such employe or

subordinate with a copy of the order of layoff, reduction or suspension and his reasons for the same, and give such employe or subordinate a reasonable time in which to make and file an explanation. Such order together with the explanation, if any, of the subordinate shall be filed with the commission.
* * * "

Section 486-17a, General Code, provides as follows:

"The tenure of every officer, employ (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; but any such officer, employe or subordinate may be removed for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of the provisions of this act, or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office.

"In all cases of removal the appointing authority shall furnish such employe or subordinate with a copy of the order of removal and his reasons for the same, and give such officer, employe or subordinate a reasonable time in which to make and file an explanation. Such order with the explanation, if any, of the employe or subordinate shall be filed with the commission. Any such employe or subordinate so removed may appeal from the decision or order of such appointing authority to the state or municipal commission, as the case may be, within ten days from and after the date of such removal, in which event the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify, the judgment of the appointing authority, and the commission's decision shall be final; provided, however, that in the case of the removal of a chief of police or chief of the fire department of a municipality an appeal may be had from the decision of the municipal commission to the court of common pleas of the county in which such municipality is situated to determine the sufficiency of the cause of removal. Such appeal shall be taken within ten days from the finding of the commission."

You will note that these sections set forth the grounds of removal and further provide that the employe shall be served with a copy of the order of removal and be given an opportunity of explanation; the employe is also given the right to appeal to the civil service commission.

The provisions of Sections 486-17 and 486-17a, supra, are clearly in conflict with Section 203, supra, which provides that the director of health shall have authority to remove forthwith a local registrar.

The civil service legislation of this state was passed in 1913 (103 Ohio Laws 698), and was carried into the statutes of Ohio as Sections 486-1a to 486-31, inclusive, of the General Code. This legislation constitutes a general system of statute law applicable to all appointments, promotions and removals in every department of the civil service of the state, and Section 486-2 provides that on and after the taking effect of this act no person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employe in the civil service of the state, the several counties, cities and city school districts therein, in any manner or by any means other than those prescribed in this act or by the rules of the state or municipal civil service commission within their respective jurisdictions.

It, therefore, is apparent that the civil service law supersedes any earlier legislation which is in conflict with its provisions.

It appears from a reading of Section 203, General Code, that it was the intention of the legislature to empower the director of health to summarily remove a local registrar, that is, to remove him forthwith. This was the primary purpose of this section; it is, therefore, in conflict with the provisions of the civil service law which prohibit the removal of employes summarily but provide for the filing of charges, a hearing and an appeal.

In view of the apparent purpose and obvious policy and intent of the General Assembly in enacting the civil service statutes to prevent the summary removal of employes, I am led to the conclusion that these statutes supersede the provisions of Section 203, *supra*, making the provisions of that section inoperative; therefore, the appointing authority authorized to remove a local registrar of a city, under the civil service statutes, is the district board of health of a municipality.

In view of the discussion herein and in specific answer to your inquiries, I am of the opinion that (1) the district board of health of a municipality is authorized to remove a local registrar of a city in accordance with the provisions of the civil service laws; and (2) a local registrar of a city is included in the classified civil service of the State of Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2259.

APPROVAL, CONDITIONALLY, OF CONTRACT BETWEEN STATE OF OHIO AND THE DAYTON MORGAN ENGINEERING COMPANY FOR SURVEYS OF BED AND BANKS OF THE MUSKINGUM RIVER IN MUSKINGUM AND TUSCARAWAS COUNTIES AT AN EXPENDITURE OF \$2,500.00.

COLUMBUS, OHIO, August 23, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination a certain contract form of a contract to be entered into by and between yourself, as Superintendent of the Public Works of the State of Ohio, and the Dayton Morgan Engineering Company by which, in consideration of the sum of twenty-five hundred dollars to be paid to it, said company contracts and agrees to make surveys of the bed and banks of the Muskingum River and its tributaries between Dresden, in Muskingum County, and Gnadenhutten, in Tuscarawas County, Ohio, and to furnish all the engineers and assistants, and all other services and equipment that may be necessary for the purpose.

By said contract it is provided that such surveys and the data thereby to be collected shall be preliminary to and for the purpose of forwarding improvements in said rivers that will accomplish therein flood protection and slack water navigation, as well as to provide water supplies for municipalities in the territory served by said rivers, and water supplies for industrial and sanitary purposes, as well as the storage water for the development of electrical energy. Among the proposed improvements to be made along the course of said rivers, for which such surveys are to be made, is the construction of impounding dams, storage reservoirs, locks, waste-weirs and wickets.

Whatever authority, express or implied, which the Superintendent of Public Works has to enter into a contract of this kind must be found in the provisions of