

325.

APPROVAL, ABSTRACT OF TITLE TO LAND IN ALLEN COUNTY TO BE
USED FOR ARMORY PURPOSES.

COLUMBUS, OHIO., April 14, 1927.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

DEAR SIR:—The warranty deed and abstract of title covering the proposed conveyance of real estate in Allen county to the state of Ohio for armory purposes have been re-submitted to this department for examination.

Said abstract had been returned to you under date of March 30, 1927, at which time I approved the title, as shown by the abstract, and returned the deed for correction.

The corrections requested have now been made, and it is my opinion that the warranty deed as now submitted is in proper form to convey to the state of Ohio a fee simple title to the real estate in question.

Respectfully,
EDWARD C. TURNER,
Attorney General.

326.

CIVIL SERVICE—CLERK OF CITY COUNCIL IS UNCLASSIFIED—ASSISTANT
CLERK MAY BE CLASSIFIED OR UNCLASSIFIED.

SYLLABUS:

1. *The position of clerk of a city council is within the unclassified civil service.*
2. *The position of assistant clerk of a city council is or is not within the unclassified civil service depending upon whether said council has fixed the duties of such assistant clerk as legislative in character or otherwise. If such duties are legislative such position is within the unclassified civil service under the provisions of subsection 5 of section 486-8a, General Code.*

COLUMBUS, OHIO, April 14, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent request for an opinion which reads as follows:

“Section 4210 G. C. provides that council within ten days from the commencement of their term shall elect a president pro tem, a clerk and such other employes of council as may be necessary and fix their duties, bonds and compensation. This section further provides that the officers and employes of council shall serve for two years but may be removed for cause. In view of these provisions can a city civil service commission determine that the position of clerk of council and assistant clerk of council are in the classified service and compel either or both of these officers to take a competitive examination?”

Section 4210 of the General Code; referred to in your letter, provides:

"Within ten days from the commencement of their term, the members of council shall elect a president pro tem, a clerk and such other employes of council as may be necessary, and fix their duties, bonds and compensation. The officers and employes of council shall serve for two years, but may be removed at any time for cause, at a regular meeting by a vote of two-thirds of the members elected to council."

Sub-section 5 of Section 486-8a, General Code, places in the unclassified civil service of the state:

"All officers and employes elected or appointed by either or both branches of the General Assembly, and such employes of the city council as are engaged in legislative duties."

In the Annual Report of the Attorney General for 1913, Vol. 1, page 722, it was held that the clerk of the city council was not in the unclassified civil service. At that time, however, the civil service law did not contain the specific provision above quoted, exempting from the classified service "employes of the city council * * * engaged in legislative duties."

Section 486-8a of the General Code was amended on May 27, 1915 (106 O. L. 400, 404) and at that time sub-section 5 was placed in the form above quoted.

The answer to your specific question depends in each case upon whether or not the duties of the clerk of council and assistant clerk of council are legislative or otherwise. Section 4210, supra, provides that the clerk and other employes shall be elected by council which shall fix their duties, bonds and compensation.

In an opinion rendered by a former Attorney General, appearing in Opinions of the Attorney General for 1919, Vol. II, page 1160, it was held that a clerk of a city council is within the unclassified civil service. On page 1162 of that opinion it is said:

"The clerk is an employe of the council, but are his duties such as may be held to be legislative duties? The answer to this question is made more difficult by the fact that the clerk has what may be called two kinds of duties, viz., (1) those duties imposed by statute; for example, 3818 G. C., and may be termed statutory duties, and (2) those duties with which the clerk is charged by action of council under Section 4210, which authorizes council to select clerks and other employes of council and 'fix their duties, * * * and compensation,' which may be termed additional duties.

With regard to the latter kind of duties, no definite opinion could be given as to their 'legislative' quality without knowing exactly what duties the council had fixed in this regard. As to the former, however, numerous statutes impose certain definite duties upon the clerk, an instance of which may be cited in Section 3818, which requires the clerk to serve copies of resolutions for improvements upon land owners, to show that the clerk of the city council is charged with certain duties incident to the exercise of council's legislative function.

The General Assembly is conclusively presumed to have known that the city council is the municipal law-making body and, as such, could not delegate its law-making power to its clerk, and the use of the term 'legislative duties' must be construed as to mean clerical duties pertaining to and in connection with the legislative function of council. It is also not without significance that this provision in Section 486-8, as amended, immediately follows the inclusion and designation of employes of the General Assembly in the unclassified service, and considering the effect of these existing statutes imposing statutory duties upon the clerk of the city council, in connection with

the enactment of municipal legislation, the general assembly used the term 'legislative duties,' meaning to include the clerk of the city council in the unclassified service."

With reference to the clerk of a city council, therefore, it is my opinion that such clerk is within the unclassified civil service.

As stated above, the clerk and other employes which would include an assistant clerk, are elected by council which fixes their duties, bonds and compensation. The status of an assistant clerk will therefore depend entirely upon whether or not council has fixed the duties of such assistant clerk as legislative in character or otherwise. If council has fixed the duties of such assistant clerk as purely legislative in character he would be by the provisions of sub-section 5 of Section 486-8a, General Code, be in the unclassified civil service. On the other hand, if council has imposed upon such assistant clerk duties which are not legislative in character, it is my opinion that he would not come under the exemption of sub-section 5 above referred to, and would be in the classified civil service.

In this connection I call your attention to an opinion of the Attorney General appearing in 1918 Opinions of the Attorney General, Vol. II, page 1645, where it was said that a city council may employ a person to obtain waivers of special assessment limitations from owners of property and may fix the compensation of such person at so much per hour; that the purpose of obtaining such waivers was to lay the foundation for legislation seeking to make the improvement in question and to make an assessment in excess of the amount limited by statute.

For the reasons above stated, it is my opinion that the position of assistant clerk of a city council is or is not within the unclassified civil service depending upon whether said council has fixed the duties of such assistant clerk as legislative in character or otherwise. If such duties are legislative, such position is within the unclassified service under the provisions of sub-section 5 of Section 486-8a, General Code.

Respectfully,

EDWARD C. TURNER,
Attorney General.

327.

USED MOTOR VEHICLE—JUNK DEALERS MUST HAVE RECEIVED A PROPER BILL OF SALE BEFORE THEY CAN DELIVER THE NECESSARY BILL OF SALE IN RESELLING.

SYLLABUS:

Under the provisions of Section 6310-11, General Code, where a junk dealer receives a "used motor vehicle," and offers the same for resale either in the form in which he received it, or by the addition of parts thereto, he is without authority to deliver the necessary bill of sale to a proposed purchaser, unless he theretofore at the time of his purchase, received a proper bill of sale under the the Ohio Motor Vehicle Registration Act.

COLUMBUS, OHIO, April 14, 1927.

HON. CHARLES R. WILSON, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows: