

226.

APPROVAL, NOTES OF SCIOTO RURAL SCHOOL DISTRICT, PICK-
AWAY COUNTY, OHIO—\$2,650.00.

COLUMBUS, OHIO, March 17, 1933.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

227.

PHYSICIAN—COUNTY INFIRMARY—NOT SUBJECT TO CIVIL SER-
VICE.

SYLLABUS:

A physician engaged by the county commissioners to furnish medical relief and medicine to the inmates of a county infirmary, as provided by section 2546, General Code, is not an employe within the meaning of the civil service law and is not subject to the provisions of section 486-8, sub-paragraph (b), General Code.

COLUMBUS, OHIO, March 18, 1933.

The State Civil Service Commission, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter which reads as follows:

“Your opinion is respectfully requested as to whether Section 2546 of the General Code of Ohio which provides that no contract for a County Home Physician shall extend beyond one year, places such position in the unclassified service, or whether Section 486-8, sub-paragraph (b) applies, which states that the classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts thereof not specifically included in the unclassified service.”

It was held in the Opinions of the Attorney General for 1917, at page 394, that:

“A physician employed by the county commissioners under section 2546 of the General Code is not under the civil service laws.”

The then Attorney General grounded his holding in that opinion on the fact that section 2546, General Code, at that time provided that the physician who was the lowest competent bidder should be selected by the county commissioners to furnish medical relief and medicine. Section 2546, amended in 102 O. L. 433, 436, then read in part as follows:

“County commissioners may contract with one or more competent physicians, to furnish medical relief and medicines necessary for the persons of their respective townships to come under their charge, but no

contract shall extend beyond one year. Such contract shall be given to the lowest competent bidder, the county commissioners reserving the right to reject any or all bids. * * * The commissioners may discharge any such physician for proper cause."

After that opinion was rendered, the legislature in 108 O. L., Part I, page 269 (1919), amended section 2546 to read in part as follows:

"The county commissioners may contract with one or more competent physicians to furnish medical relief and medicines necessary for the inmates of the infirmary, but no contract shall extend beyond one year. * * * The commissioners may discharge any such physician for proper cause. * * *."

The fact that section 2546 no longer provides that the county commissioners shall select the physician who was the lowest competent bidder is no reason why the conclusion reached in the Opinions of the Attorney General, supra, should not be followed, since that conclusion is sound for a reason other than that stated in that opinion. It is to be noted that section 2546 provides that the county commissioners shall select a physician to furnish both medical relief and medicine to the inmates of a county infirmary. It is apparent on a reading of that section that it was not the intention of the legislature to create thereby an employment such as would be within the scope of the civil service law, inasmuch as the services to be rendered by the physician selected by the county commissioners are to be beyond his personal employment since they include the furnishing of medicine. The fact that the legislature specifically provided that the contract should be for both medical relief and medicine clearly indicates that a contractual relationship was intended by the legislature and not an employment within the meaning of the civil service law. In other words, section 2546 creates a relationship which is not within the intentment of the civil service law because it not only provides for the employment of a physician but also requires that such physician shall furnish medicine.

A question similar to the one raised by you in your letter was passed upon in the case of *People, ex rel. Seib, vs. Redfield*, 86 App. Div. 367 (N. Y.). The syllabus in that case reads as follows:

"An honorably discharged exempt fireman, engaged by the department of public works in the city of New York to furnish a horse and wagon to the city and to drive the same for a certain sum per day, occupies a contractual relation to the city and is not a 'person holding a position by appointment or employment,' within the meaning of section 21 of the Civil Service Law (Laws of 1899, chap. 370, as amd. by chap. 270 of the Laws of 1902)."

The court, at page 368, said that:

" * * * it is evident from the nature of his engagement that his relations with the municipality are purely contractual, involving the use of the horse and wagon as well as his own services at a lump sum per diem, and that he is, therefore, not within the meaning of the section cited, a 'person holding a position by appointment or employment.'"

Specifically answering your inquiry, I am of the opinion that a physician engaged by the county commissioners to furnish medical relief and medicine to

the inmates of a county infirmary, as provided by section 2546, General Code, is not an employe within the meaning of the civil service law and is not subject to the provisions of section 486-8, sub-paragraph (b), General Code.

Respectfully,

JOHN W. BRICKER,

Attorney General.

228.

SECURITY—COUNTY FUNDS—LIMITED TO SECURITIES ENUMERATED IN SECTIONS 2732 AND 2288-1, GENERAL CODE.

SYLLABUS:

County commissioners may not legally accept as security for the deposit of county funds in a county depository, notes of individuals, partnerships, associations or private corporations unsecured by first mortgages on approved real estate in Ohio, or any other securities than those enumerated in Sections 2732 and 2288-1, General Code.

COLUMBUS, OHIO, March 18, 1933.

HON. HOWARD A. TRAU, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Commissioners of Logan County have requested me to obtain from your office an opinion on the acceptance by the Commissioners of first mortgage security in lieu of bonds for county deposits.

In view of the closing of several banks in this community, the Commissioners are desirous of securing something more than a bond by the directors for the safe-keeping of money deposited in the banks by the county.

One case in particular is that of a National Bank which ordinarily does not have many first mortgages on real estate, but most of their paper is notes. Can these notes be accepted by the Commissioners to secure their deposits in lieu of first mortgage notes secured by real estate?”

County Commissioners are directed by law to designate county depositories for the deposit of public funds of the county (Sections 2715 et seq., General Code.)

A bank or trust company designated as a county depository is required to account for the funds deposited with it, and interest on the same in accordance with its depository contract, to secure which it is required by Section 2722, General Code, to hypothecate certain securities or execute a good and sufficient undertaking payable to the county in such sum as the county commissioners direct, but not less in any case than the sum that shall be deposited in such depository at any one time. Said Section 2722, General Code, provides that no award of funds to a depository shall be binding until the said security is given.

Further requirements of an undertaking given to secure county deposits in a county depository are set forth in Section 2723, General Code, and the classes