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1. SECRETARIES—DENTAL BOARD—BOARD OF OPTOMETRY—BOARD OF BARBER EXAMINERS—CIVIL SERVICE COMMISSION MAY FIX CLASSIFICATIONS AND ESTABLISH RATE OF PAY OF EACH SECRETARY—SECTION 1314 ET SEQ., 1295-23 ET SEQ., 1081 ET SEQ., G. C.
2. SECRETARY—ACCOUNTANCY BOARD—SHOULD RECEIVE PRESCRIBED PER DIEM RATE FOR EACH DAY ENGAGED IN BUSINESS OF BOARD—SECTION 1370 ET SEQ., G. C.
3. SECRETARY—BOARD OF EMBALMERS AND FUNERAL DIRECTORS—SECTION 1335-1 ET SEQ., G. C.—ANNUAL SALARY—NOT TO EXCEED THREE THOUSAND DOLLARS—SECRETARY NOT SUBJECT TO PROVISIONS OF CLASSIFICATION LAW—SECTION 486-7a ET SEQ., G. C.
4. SECRETARY—BOARD OF EXAMINERS OF ARCHITECTS—SECTION 1334 ET SEQ., G. C.—PER DIEM RATE, EACH DAY SPENT IN PERFORMANCE OF DUTIES—ADDITION, SALARY TO BE FIXED BY BOARD—NOT TO EXCEED ONE THOUSAND FIVE HUNDRED DOLLARS PER ANNUM—SECRETARY NOT SUBJECT TO CLASSIFICATION LAW—SECTION 486-7a ET SEQ., G. C.

5. SECRETARY—BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS—SECTION 1083-1 ET SEQ., G. C.—BOARD SHALL DETERMINE SALARY—ADDITION, PER DIEM COMPENSATION PROVIDED FOR BOARD MEMBERS—SECRETARY NOT SUBJECT TO PROVISIONS OF CLASSIFICATION LAW—SECTION 486-7a ET SEQ., G. C.

SYLLABUS:

1. The Civil Service Commission may fix the classification and establish the rate of pay of the secretary of the Dental Board, governed by Section 1314, et seq., General Code, the secretary of the Board of Optometry, governed by Section 1295-23, et seq., General Code, and the secretary of the Board of Barber Examiners, governed by Section 1081, et seq., General Code.

2. The secretary of the Accountancy Board, governed by Section 1370, et seq., General Code, should receive the per diem rate prescribed by law for members of the board for each day engaged in the business of said board.

3. The secretary of the Board of Embalmers and Funeral Directors, governed by Section 1335-1, et seq., General Code, should receive an annual salary, not to exceed three thousand dollars, the amount to be fixed by the board. Said secretary is not subject to the provisions of the classification law, Section 486-7a, et seq., General Code.

4. The secretary of the Board of Examiners of Architects, governed by Section 1334, et seq., General Code, should receive the per diem established for members of said board for each day spent in performing his duties as a member of said board, and, in addition, a salary to be fixed by said board, which salary shall not exceed one thousand five hundred dollars annually. Said secretary is not subject to the provisions of the classification law, Section 486-7a, et seq., General Code.

5. The secretary of the Board of Registration for Professional Engineers and Surveyors, governed by Section 1083-1, et seq., General Code, should receive such salary as the board shall determine, in addition to the per diem compensation provided for members of said board. Said secretary is not subject to the provisions of the classification law, Section 486-7a, et seq., General Code.

Columbus, Ohio, December 17, 1951

Hon. Herbert D. Defenbacher, Director, Department of Finance
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“In general the laws governing the various examining boards contain the provision that the board shall elect one of its members

as secretary and conferred authority upon the board to fix the salary of the secretary.

“When Amended Substitute House Bill No. 382 was enacted by the 98th General Assembly, in most instances, the sections conferring authority upon the board to fix the salary of the secretary were amended, and such authority taken from the board.

“Following the effective date of House Bill No. 382, the Civil Service Commission fixed classifications and established salaries for three of the secretaries who were members of the board, and such persons have been paid compensation, on a part time basis, in accordance with the salary so fixed. In other instances the secretary has drawn compensation on a per diem basis.

“May we respectfully request your opinion on the following question :

“Where the statutes provide that the secretary must be a member of the board, is the position of secretary an employment within the meaning of House Bill No. 382, as amended by House Bill No. 450 of the 99th General Assembly, for which the Civil Service Commission should fix a classification and establish the rate of pay, or should such secretaries be paid the per diem rate as fixed by law for members of the board for their services?

“The following boards are affected :

Board of Accountancy
 Board of Examiners of Architects
 Board of Barber Examiners
 State Dental Board
 Board of Engineers and Surveyors
 Board of Embalmers and Funeral Directors
 Board of Optometry.”

While it is true that the statutes governing each board set out in your request require that the secretary of a particular board shall also be one of its members, the other provisions of the respective statutes are not identical. Rather, the statutes governing these boards fall into three classes. Those classes overlap one another so far as chronological history is concerned and appear to have no relation to the nature of the business or profession regulated; but they do differ so far as the compensation of the secretary is concerned.

One of these classes includes the statutes governing the Dental Board (Section 1314, et seq., General Code), the Board of Optometry (Section 1295-23, et seq., General Code) and the Board of Barber Examiners (Section 1081, et seq., General Code).

The Dental Board was created by an act set out in 99 Ohio Laws, 66, effective in 1908. That act provided in part as follows:

“* * * the governor * * * shall appoint a state dental board * * *.

“The state dental board shall organize by the election from its members of a president, a secretary and a treasurer * * *.

“Each member of the * * * board shall receive ten dollars for each day actually employed in the discharge of his official duties, and his necessary expenses incurred. The secretary shall receive an annual salary to be fixed by the board, and his necessary expenses incurred in the discharge of his official duties. * * *”

Almost immediately there was presented to the then Attorney General the question of whether “the secretary of the board (was) entitled to receive compensation as a member, in addition to such salary as may be fixed by the board for him as secretary.” In Opinions of the Attorney General for 1908, page 218, this question was answered succinctly as follows:

“* * * While the question is not free from doubt, I am of the opinion that the secretary is entitled to compensation as a member of the board, in addition to salary as the secretary.”

The Board of Optometry was created by an act set out in 108 Ohio Laws, 73, effective in 1919. So far as the problem here involved is concerned, the language of that act was identical with the act creating the Dental Board.

The Board of Barber Examiners was created by an act set out in 115 Ohio Laws, 312, effective in 1933. The language of that act was the same as the two acts referred to above, except that the maximum limit of the secretary's salary was set at \$2700. In Opinion No. 1757, Opinions of the Attorney General for 1933, page 1624, the following question concerning this board was presented to the then Attorney General:

“Could a member of the Board, acting as Secretary, legally receive compensation in both capacities?”

It was held, as indicated by the syllabus of the opinion, that the secretary “is entitled to his annual salary as secretary in addition to his per diem compensation as member.” The 1908 opinion, *supra*, was cited with approval.

Although the question was never specifically answered, it follows that the above opinions would have applied with equal force to other boards created under identical statutory provisions.

Amended Substitute House Bill No. 382 of the 98th General Assembly, 123 Ohio Laws, 862, to which you referred in your request, became effective in 1949. It was an act designed to standardize positions and salaries in the state service, and provided in part as follows:

“ * * * Section 486-7a. All positions, offices and employments in the state service, except those hereinafter excluded, are classified hereby as follows:

“* * * The provisions of this act shall not apply to the following persons, positions, offices and employments: * * *

“(4) * * * members of all boards, commissions and councils.”

So far as the Dental Board, the Board of Optometry and the Board of Barber Examiners were concerned, the statutory language permitting those boards to establish salaries for their respective secretaries was deleted by the same act. As amended, each statute provided in part as follows:

“The secretary shall receive his necessary expenses incurred in the discharge of his official duties.”

The question which you have presented is whether, in light of the statutes set out above, a position of secretary of one of the boards there referred to is an employment for which the Civil Service Commission should fix a classification and establish the rate of pay, or whether a secretary receives the per diem rate established for members of a board. It seems clear that your question was propounded without the knowledge of the 1908 and 1933 opinions referred to above since it assumes that only one of those methods of payment is permissible—while those opinions hold that the secretary may receive both salary and per diem. Your real question appears to be whether the General Assembly, by its adoption of House Bill No. 382, *supra*, has abolished the salaries of the secretaries, in view of its action which deleted not only the powers of the board to fix salaries, but also deleted reference to the salaries themselves.

That question is not altogether free from doubt. It is true that in its present form the literal statutory language governing the boards in question does not refer to separate salaries for the secretaries; and I am well aware

of cases such as *Slingluff v. Weaver*, 66 Ohio St., 621, and *State, ex rel. Shaffer v. Defenbacher*, 148 Ohio St., 465, which hold that the intention of the legislature can be derived only from the language which it employs. However, I do not feel that those cases prevent me from looking at other facets of the very act in question—House Bill No. 382—in order to arrive at the legislative intent.

It should be pointed out that House Bill No. 382 was an act “to provide for the standardization of positions * * *, salaries and wages of employes in the state service,” and was not one to abolish certain salaried positions theretofore created. To say that both objects were accomplished by the same bill necessarily ascribes to the General Assembly an intention to violate Article II, Section 16 of the Constitution, providing that no bill shall contain more than one subject.

It is also true that the bill itself provided that *all* position, except those excluded, should be classified; and it excluded only the position of board member and not the position of secretary. Finally, the act did not abolish altogether the positions of secretaries of these three boards, but recognized their continued existence as separate positions.

In view of all these factors, I do not feel myself compelled to hold that the General Assembly has abolished the salaries in question. It is, therefore, my opinion that the Civil Service Commission, if requested to do so, may fix the classification and establish the rate of pay of the secretary of the Dental Board, governed by Section 1314, et seq., General Code, the secretary of the Board of Optometry, governed by Section 1295-23, et seq., General Code, and the Secretary of the Board of Barber Examiners, governed by Section 1081, et seq., General Code.

The statutes governing the Accountancy Board (Section 1370, et seq., General Code) do not present the problem considered above. Section 1370, General Code, provides in part as follows:

“There is hereby created an accountancy board of Ohio.
* * *”

Section 1372, General Code, provides in part as follows:

“The board annually shall elect a president, secretary and treasurer from its members. * * * The board may employ such clerks as are necessary to assist it in the performance of its duty and the keeping of its records.”

Section 1378, General Code, provides as follows:

“Each member of the board shall be paid fifteen dollars for each day or portion thereof spent in the discharge of his official duties and shall be reimbursed for his actual and necessary expenses incurred in the discharge of such duties.”

No change was made in these statutes by House Bill No. 382, supra.

I find nothing in these statutes, or their legislative history which indicates that it was ever the legislative intention to make the position of secretary of the board a separate salaried position. As was pointed out in the 1933 opinion, referred to above, the general rule is that a member of a board may not hold a salaried position under such board in the absence of a specific statutory authorization. No such provision ever having been made by statute, there is no basis upon which the secretary can be paid a separate salary, and it is, therefore, my opinion that the secretary of the Accountancy Board should be paid the per diem rate fixed by law for members of the Board.

Special provision for the salary of the secretary is made by the statutes governing the Board of Embalmers and Funeral Directors, the Board of Examiners of Architects and the Board of Registration for Professional Engineers and Surveyors. Section 1335-1, General Code, provides in part as follows:

“* * * there is hereby created a state board known and designated as the board of embalmers and funeral directors of the state of Ohio * * *.”

Prior to its amendment by House Bill No. 382, supra, in 1949, Section 1335-3, General Code, provided in part as follows:

“* * * Said board shall have the power to select out of its own members a president, secretary and treasurer; * * *. All the members of said board, with the exception of the secretary, shall serve without compensation, providing that each member, except the member who is secretary, shall be reimbursed for his necessary traveling expenses and necessary expense incident to his attendance upon the business of the board, and in addition thereto the sum of ten (\$10.00) dollars per diem for each day, not to exceed sixty days per year actually spent by such member upon the business of the board. Providing, the secretary shall receive and be paid an annual salary not to exceed three thousand (\$3,000.00) dollars per annum, the amount and method of payment of which

shall be fixed by said board and in addition thereto such secretary shall receive his necessary traveling and other incidental expenses as are incurred in the performance of such duties and all such expenses, per diem, and compensation shall be paid out of the receipts of the board.

“There shall be appointed by said board an agent whose title shall be: ‘inspector of the board of embalmers and funeral directors of the state of Ohio,’ * * *.

“Such inspector shall hold office during the pleasure of said board, * * *. Said agent shall receive such compensation as the board may determine.

“The board may employ such clerical or other help or assistance as may be necessary to carry out the provisions of this act, and the terms of such employment shall be determined by the board.”

By the provisions of House Bill No. 382, supra, the power of the board to establish the compensation of the inspector and the clerical help was repealed, but the above provisions concerning the compensation of the board members and the secretary were not changed. A recent amendment, 124 Ohio Laws, Amended Senate Bill No. 365, increased the per diem rate and made some alteration of the statutory language, but did not affect the present problem.

It is my opinion that the secretary of the Board of Embalmers and Funeral Directors should be paid an annual salary, not to exceed three thousand dollars, the amount to be fixed by the board, and his necessary expenses incurred in the performance of his duties. Although the position of secretary of the board is not specifically excluded from the operation of the general classification law, Section 486-7a, et seq., General Code, the salary and the method of fixing it have been specifically covered by another statute, and it is my opinion that this removes the secretary from the operation of the general statute. Since there is no question of classification involved, I see no reason for departing from the plain wording of the statute.

Concerning the Board of Examiners of Architects, Section 1334, General Code, provides in part as follows:

“* * * the governor shall appoint a state board of examiners of architects * * *.”

Section 1334-1, General Code, provides in part as follows:

“The said state board * * * shall elect from its membership a president and a secretary * * *.”

As originally enacted, Section 1334-2, General Code, provided in part as follows:

“* * * Each member of the board shall be entitled to receive, as a part of the expense of the board, ten dollars per diem while actually engaged * * * in the performance of their duties under this act.

“The member shall receive also * * * the * * * necessary expenses incurred * * *.

“In addition to the above per diem allowance, the secretary shall receive such salary as the board shall determine but not to exceed one thousand five hundred dollars per annum, * * *.”

By a recent act of the General Assembly, 124 Ohio Laws, Amended Senate Bill No. 365, the per diem allowance was increased to fifteen dollars, but the other provisions of the section were not changed.

It is my opinion, for the reasons set out above, that under the plain wording of the statute, the secretary of the Board of Examiners of Architects should receive the per diem rate established for members of the board for each day spent in performing his duties as a member of the board and, in addition, a salary to be fixed by the board, which salary shall not exceed one thousand five hundred dollars annually. It is also my opinion that said secretary is not subject to the operation of the classification law.

Section 1083-3, General Code, provides in part as follows:

“A state board of registration for professional engineers and surveyors is hereby created * * *.”

As originally enacted, Section 1083-5, General Code, provided as follows:

“Each member of the board shall receive the sum of ten (\$10.00) dollars per diem when actually attending to the work of the board or of any of its committees and for the time spent in necessary travel; and in addition thereto, shall be reimbursed for all actual traveling, hotel and other expenses necessarily incurred in carrying out the provisions of this act.”

Section 1083-7, General Code, provides in part as follows :

“* * * The board shall elect or appoint annually from their members, the following officers: A chairman, a vice-chairman, and a secretary. * * *”

Section 1083-9, General Code, provides in part :

“* * * The secretary of the board shall receive such salary as the board shall determine in addition to the compensation and expenses provided for in section 5 * * *.”

The recent act of the General Assembly, supra, increased the per diem allowance to fifteen dollars, but the other statutory provisions were not changed.

For the reasons already set out, it is my opinion that under the plain wording of the statute, the secretary of the Board of Registration for Professional Engineers and Surveyors should receive such salary as the board shall determine in addition to the per diem compensation provided for members of said board. It is also my opinion that said secretary is not subject to the classification law, Section 486-7a, et seq., General Code.

Respectively,

C. WILLIAM O'NEILL
Attorney General