

4461.

POLICE OFFICER—REMOVED FROM CIVIL SERVICE FOR MISCONDUCT IN OFFICE—MAY NOT BE REINSTATED BY CIVIL SERVICE COMMISSION.

SYLLABUS:

A police officer who has been removed from the classified service, after a hearing on charges of misconduct in office, cannot be reinstated to the classified service or have his name placed on an eligible list by a rule promulgated by a city civil service commission.

COLUMBUS, OHIO, June 29, 1932.

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

GENTLEMEN:—This will acknowledge your letter of recent date, which reads in part as follows:

"A police captain in a city in Ohio regularly appointed from an eligible list furnished by the Civil Service Commission, was dismissed from office by the Director of Public Safety in April, 1928, said dismissal being sustained by the Civil Service Commission in May, 1928, on charges of misconduct in office.

The Civil Service Commission in office now has enacted a rule whereby former employes under classified service may be placed on the eligible list for appointment, and it is proposed to place this man on the eligible list who was dismissed for cause in 1928.

Question. May a city civil service commission place a man on the eligible list for appointment as captain of police, the same man having been dismissed from the above position by a former civil service commission after a hearing on the charge of misconduct in office?"

The civil service act provides that no person shall be appointed to the classified service in any manner or by any means other than that prescribed by the civil service law. Section 486-2, General Code. Vacancies in the classified service can be filled only by appointing persons certified to the appointing authorities by the civil service commission from an eligible list created by competitive examination. See section 486-13, General Code.

Eligible lists for positions in the classified service can be created only in the manner provided for by section 486-12, General Code, which reads:

"From the returns of the examinations the commission shall prepare an eligible list of the persons whose general average standing upon examinations for such grade or class is not less than the minimum fixed by the rules of the commission and who are otherwise eligible; and such persons shall take rank upon the eligible list as candidates in the order of their relative excellence as determined by the examination without reference to priority of time of examination. In the event of two or more applicants receiving the same mark in an examination, priority in the time of application shall determine the order in which their names shall be placed on the eligible list. The term of eligibility of each list shall be

fixed by the commission at not less than one year nor more than two years. When an eligible list is reduced to three names or less a new list shall be prepared."

There is no provision in the civil service act which authorizes the civil service commission to create an eligible list in any manner other than that provided for by section 486-12, quoted herein.

The legislature has also provided in section 486-16, General Code, that, on the abolishment of a position in the classified service, the incumbent of the abolished position shall be placed by the civil service commission at the head of an appropriate eligible list. Section 486-16 reads in part as follows:

* * * * *

Any person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct on his part may, with the consent of the commission, be reinstated within one year from the date of such separation to a vacancy in the same or similar office or position in the same department; and whenever any permanent office or position in the classified service is abolished or made unnecessary, the person holding such office or position shall be placed by the commission at the head of an appropriate eligible list, and for a period of not to exceed one year shall be certified to an appointing officer as in the case of original appointments."

The provision in section 486-16 which provides that any person holding an office or position in the classified service who has been separated from the service without delinquency or misconduct on his part may, with the consent of the commission, be reinstated within one year from the date of such separation, has been held to have no application to a person separated from the classified service upon charges of delinquency or misconduct.

The case of *State, ex rel. Chapman, vs. Lesser*, 94 O. S. 387, referred to by you in your letter, sustains that conclusion. The third and fifth paragraphs of the syllabus are pertinent to your inquiry and read as follows:

"3. Where the charges filed by the mayor are sustained upon hearing by the civil service commission, and that commission orders that the suspension be made permanent, and later directs that a civil service examination be held to determine the fitness of applicants for that position, and in pursuance of such order a civil service examination is held and a list of persons eligible to the appointment is submitted to the mayor, who thereupon permanently appoints a person named in the eligible list, the jurisdiction of the civil service commission is exhausted and it has no power thereafter, upon motion of the deposed officer or otherwise, to open up and rescind its former order and reinstate him in the office already filled in pursuance of civil service requirements."

"5. The second paragraph of Section 486-16, General Code, has no application to an officer separated from the service by an order of the civil service commission upon charges of delinquency or misconduct on his part filed by the mayor, where such civil service commission has found and declared that any one or more of such charges are true, and upon such finding orders that his suspension be made permanent."

Inasmuch as the legislature has expressly provided for the reinstatement of employees who have been separated from the classified service without cause, it necessarily follows that a person who has been dismissed from the classified service for misconduct or delinquency in office cannot be reinstated by a rule of the civil service commission. Your attention is also called to the provision of section 486-11 which reads as follows:

" * * * The commission may refuse to examine an applicant, or after an examination to certify an eligible, * * * who has been dismissed from either branch of the civil service for delinquency or misconduct."

Although the provision just quoted is not pertinent to your inquiry, nevertheless it evinces a legislative intent to grant to civil service commissions the power, either before or after a civil service examination but before certification of an eligible list to an appointing officer, to exclude from the classified service persons who have previously been removed from the classified service for misconduct or delinquency.

I am therefore of the opinion that a police officer who has been removed from the classified service, after a hearing on charges of misconduct in office, cannot be reinstated to the classified service or have his name placed on an eligible list by a rule promulgated by a city civil service commission.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4462.

APPROVAL, CERTIFICATE OF TITLE TO LAND IN BENTON TOWNSHIP, HOCKING COUNTY, OHIO—HARVEY A. CONKLE.

COLUMBUS, OHIO, June 29, 1932.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—At the request of Mr. Edmund Secrest, State Forester, I sent a member of my staff to Logan, Ohio, recently, in order to examine the records of Hocking County, Ohio, and to determine the status of the title of a tract of land described as the southwest quarter of the northeast quarter of section No. 4, township No. 11, range No. 18, in Benton Township, Hocking County, Ohio, which tract the State of Ohio has under consideration of purchase from one Harvey A. Conkle.

Enclosed please find a certificate of title made by said member of my staff stating, after personal examination, that the records of Hocking County, Ohio, indicate that, on June 15, 1932, said Harvey A. Conkle had a good and merchantable fee simple title to said property; that the taxes for the second half of the year 1931, in the amount of \$3.09, are unpaid and a lien upon said property; that the taxes for the year of 1932 are also a lien upon said property; and that all