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POLICEMAN—WITHIN CIVIL SERVICE—MAY NOT BECOME MEMBER OF HEALTH BOARD—SECTION 486-23, GENERAL CODE, CONSTRUED.

SYLLABUS:

A member of the city police department who is in the classified civil service may not legally hold the office of a member of the city board of health at the same time, without violating the provisions of Section 486-23, General Code, which prohibit any officer or employe in the classified civil service from taking part in politics other than voting as he pleases and expressing freely his political opinions.

COLUMBUS, OHIO, June 19, 1929.

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

GENTLEMEN:—Your letter of recent date is as follows:

“May a member of a city police department who is in the classified service legally hold the office of member of the city board of health at the same time?”

Section 4404, General Code, providing for the establishment of a municipal board of health, is as follows:

“The council of each city constituting a city health district, shall establish a board of health, composed of five members to be appointed by the mayor and confirmed by the council, to serve without compensation, and a majority of whom shall be a quorum. The mayor shall be president by virtue of his office. Provided that nothing in this act (G. C., Secs. 1261-16 et seq.; 4404; 4405; 4408; 4413) contained shall be construed as interfering with the authority of a municipality constituting a municipal health district, making provision by charter for health administration other than as in this section provided.”

Section 4413, General Code, provides that orders and regulations made by a city board of health intended for the general public shall be adopted, advertised, recorded and certified as any ordinance of municipalities and that the record thereof shall be given in all courts of the state the same force and effect as is given such municipal ordinances. Section 4414, General Code, provides a penalty for the violation of such ordinances, and Section 4422 provides for the arrest and prosecution of persons neglecting or disregarding such orders of the board of health.

As to the duties of the members of a city police department, it is provided in Section 4378, General Code, that “the police force shall preserve the peace, protect the persons and property and obey and enforce all ordinances of council and all criminal laws of the state and the United States. * * * ” Sections 4413, 4414 and 4422, General Code, would seem to indicate that certain ordinances of the city board of health are to be considered in the same light as ordinances of council, which are to be enforced by the police department. Because of this fact alone, a serious question might be raised as to the incompatibility of these two offices.

In view of Section 4218, General Code, which provides that a member of council may not hold any other public office or employment except that of notary public or member of the State militia, it would seem clear that a member of the city police department at the same time cannot be a member of council. While the city board of

health has not, by any means, the broad powers of council, in so far as the police department is concerned, a city board of health has similar powers to the extent of making orders and regulations which are enforced in the same way as ordinances of council.

Coming now to a consideration of the fact that the member of the police department referred to in your communication is in the classified civil service of the city, as bearing upon the question submitted, Section 486-23, General Code, is as follows:

"No officer, employe, or subordinate in the classified service of the state, the several counties, cities and city school districts thereof, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution or payment from any officer, employe, or subordinate in the classified service of the state, the several counties, cities or city school districts thereof; nor shall any officer or employe in the classified service of the state, the several counties, cities and city school districts thereof be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions."

This department, in construing this section, has held that persons in the classified civil service could not be candidates for nomination for public office in primary elections, nor could they be candidates for election to public office at a general election without resigning their positions in the classified civil service. Opinions of Attorney General, 1914, p. 509. See also Opinions of Attorney General, 1916, Vol. I, p. 375.

My predecessor, in considering this section, in an opinion under date of May 4, 1928, directed to the State Civil Service Commission, being Opinion No. 2060, held as follows:

"A person in the classified civil service of the state cannot be a candidate for the office of village councilman or hold said office by election *or appointment* without violating the provisions of Section 486-23, General Code." (Italics the writer's.)

In Opinion No. 2545, under date of September 5 of the same year, it was held that holding the office of clerk of the board of deputy state supervisors of elections was taking part in politics in violation of the provisions of Section 486-23. The office of clerk of the board of deputy state supervisors of elections is an appointive office and not an office involving activities on behalf of a particular political party. It was nevertheless held that the duties of that office relating to the conduct of elections are political in their nature and therefore involved doing something more in the way of political activity than voting and expressing one's political opinions.

The word "politics" as used in this section of the General Code, wherein one in the classified civil service is prohibited from taking "part in politics other than voting as he pleases and expressing freely his political opinions," requires consideration. There appears in the General Code no definition of the word "politics." It may be defined in three different ways, depending upon the angle of approach: First, it is the interplay in public affairs, of diverse purposes and diverse opinions upon men and measures; second, it is the arena through which all must travel who would

participate in government in a democracy; third, it is the science and art of government and as such is the super-profession.

I am of the opinion that members of a city board of health are engaged in politics, for the reason that the city board of health is an executive body and exercises administrative and discretionary functions for the hygienic welfare of the inhabitants of the city.

Considering the word "politics" in its more restricted sense as having to do with political party activities, the question arises as to whether or not a member of the city board of health appointed by the mayor, who is an elected officer, is engaged in carrying on and administering the policies of the party of which the appointing officer is a member. Whether or not in the particular instance, the mayor may have been elected upon the platform of a political party or upon his own independent platform would not alter the situation if his appointees are in harmony with the policies, opinions or principles of government for which he stands. Certainly, a public official who has been elected to office to perform the duties of his office in accordance with certain policies and principles of government, is going to make appointments with a view of fulfilling his obligations to the electors in an endeavor to carry out the policies and principles of his platform, particularly when appointing such an executive and administrative officer as a member of the city board of health. An appointed officer in carrying out and putting into practice for an elected officer as his appointee, certain governmental principles, theories of government, or policies, is probably rendering just as definite a service to those principles, theories or policies of such elected officer as he would be if actively campaigning on their behalf prior to election. If the elected officer is affiliated with a political party, his principles, theories or policies are those of the party and constitute the platform of such political party. If the elected officer has been elected on an independent ticket, the principles, policies and theories of government for which he stands are nevertheless his platform and he should bear the same position with respect to his platform as an elected officer with party affiliations bears to the political party.

It is my view that any man is in politics who is appointed by any official administering government, and surely one who is elected by the people. It would, therefore, appear that a member of the city board of health appointed by the mayor, in performing the duties of his office is doing a great deal more in the way of political activity than merely voting as he pleases and expressing his political opinions.

In view of the foregoing, I am of the opinion that a member of the city police department who is in the classified civil service may not legally hold the office of a member of the city board of health at the same time, without violating the provisions of Section 486-23, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

545.

APPROVAL, LEASE TO LAND IN GREENE COUNTY FOR USE OF
DAYTON STATE HOSPITAL.

COLUMBUS, OHIO, June 20, 1929.

HON. H. H. GRISWOLD, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date,