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INSTITUTION—WORD “LOCATION” MAY BE CONSTRUED TO INCLUDE A PARTICULAR INSTITUTION—DIVISION OF MENTAL HYGIENE, DEPARTMENT OF PUBLIC WELFARE—SECTION 486-7b, PARAGRAPH 8, G. C.

SYLLABUS:

The word “location,” as used in paragraph 8, of Section 486-7b, General Code, may be construed to include a particular institution maintained by the Division of Mental Hygiene of the Department of Public Welfare.

Columbus, Ohio, January 22, 1952

Hon. Carl W. Smith, Chairman, Civil Service Commission of Ohio  
Columbus, Ohio

Dear Sir:

I have your request for my opinion arising from the following situation:

On November 27, 1951, the Director of the Department of Public Welfare issued his “Executive Order No. 22.” That order provided in part as follows:

"It appearing that the managing officers in the Division of Mental Hygiene of this Department are unable to recruit and retain qualified housekeeping and patient-caring employees in the lower pay ranges in their respective institutions, it is ordered, subject to the authorization of the Civil Service Commission and the approval of the Director of Finance, as provided by Paragraph 8 of Section 486-7b of the General Code:

That the salaries of the following employees in the mental hygiene institutions of the State of Ohio be advanced \* \* \*."

Then followed a list of classification numbers and titles prescribed by Section 486-7a, General Code. The order concluded as follows:

"Provided, however, that this Order shall not apply to the employees of any mental hygiene institution who were heretofore advanced two pay ranges in compliance with the last sentence of paragraph 8 of Section 486-7b of the General Code.

"This order shall become effective on and after December 16, A. D., 1951."

This order was approved on November 29, 1951 by the Governor and the Director of Finance.

On December 20, 1951, the Director of the Department of Public Welfare wrote to you as follows:

"In connection with my letter to you under date of November 28, 1951, enclosing Executive Order No. 22 of this Department, dated November 27, 1951, I have conferred further with the Governor relative to this order.

"In order to avoid complications with other Departments, we are renewing our request of November 28th, except that we have no objection to the following positions being eliminated from the request:"

Then followed a list of part of the titles set out in Order No. 22 referred to above. The letter concluded as follows:

"Since the remaining positions for which changes in pay ranges are requested are almost exclusively in the Welfare Department, it will be consistent with our request to make the order State-wide.

"This renewal of our request of November 28th, with modification, has the approval of the Governor."

You have submitted to me the following questions arising out of the matter set out above :

“(1) Whether the ‘Division of Mental Hygiene’ comes within the meaning of the word ‘location’ as exists in paragraph eight, Section 486-7b, and

“(2) Whether proposed pay range changes for classifications in the Division of Mental Hygiene, which exist also in many other departments, shall be confined to the Division of Mental Hygiene.”

The general scheme of the so-called classification law, Section 486-7, et seq., General Code, is quite simple. Section 486-7a classifies all positions in the state service into a number of standard classifications; Section 486-7b specifies the pay ranges and the steps within those pay ranges by which all state employes shall be paid; and Section 486-7c assigns the classifications established by Section 486-7a to the pay ranges established by Section 486-7b.

Your problem involves the interpretation of Section 486-7b, which provides in part as follows :

“1. All employees working for the state of Ohio \* \* \* shall be paid a salary or wage in accordance with one of the following pay-ranges, set up in monthly amounts, to-wit : \* \* \*”

Then follows a list of the pay ranges from 1 to 52, inclusive, and the monthly salary to be paid at each of the five steps within the respective ranges. Paragraph 8 of this section, to which you have referred, provides as follows :

“The state civil service commission, after consulting with the heads of affected departments, may authorize higher salary ranges for particular classes and locations when substantial evidence is presented as to the inability of the state to recruit and retain qualified workers at the established ranges in the particular class and location, subject to the approval of the director of finance. Provided, further, that the commission shall authorize two higher salary ranges for all employees working in any state tubercular-mental hygiene institution, excepting the superintendent and staff physicians.”

Logically, paragraph 8 of Section 486-7b belongs under the provisions of Section 486-7c, since it refers to “higher salary ranges for particular classes,” and the relation between classes and ranges is established by the

later section. In order to interpret the paragraph intelligently, it will be read in connection with Section 486-7c, which provides in part that :

“The classifications of positions \* \* \* in the state service established in section 486-7a \* \* \* are assigned hereby to the pay ranges established in section 486-7b \* \* \* in accordance with the following schedule, to-wit : \* \* \*”

It seems to me that the problem which you have presented has three possible solutions and that the proper one depends upon the construction given to the word “location,” as used in paragraph 8. The word could be construed to mean a particular administrative department or division. Such a construction, however, would defeat the very purpose of the classification law which was intended to standardize salaries throughout the state service.

The word could be construed to refer to a certain geographical area, with all state employes of a certain classification within that area to be affected by the Commission’s action in allowing pay increases. Under a different set of facts, it is possible that such an interpretation would be the proper one, but I do not believe that it deals properly with the instant case.

The third possible solution is midway between the two set out above. Under that solution the word “location” would be construed to refer to any state institution as a physical entity, which, because of its special physical characteristics, was properly a subject for separate classification. I believe that this solution is the proper one and comports with the action of the General Assembly in enacting the second sentence of paragraph 8. That sentence is as follows :

“\* \* \* Provided, further, that the commission shall authorize two higher salary ranges for all employees working in any state tubercular-mental hygiene institution, excepting the superintendent and staff physicians.”

This provision was added by House Bill No. 450 of the 99th General Assembly. Its purpose was obvious, namely, to grant pay increases to the employes of the tubercular-mental institutions. This purpose was accomplished by adding a proviso to the already existing statute providing for increases “in (a) particular class and location.” By using this method of statutory arrangement to accomplish such a purpose, it is my opinion that the General Assembly indicated that it construed the foregoing refer-

ence to "location" to mean any particular state institution that could be classified according to its physical characteristics. It is also my opinion that your Commission may follow this precedent and authorize higher salary ranges for particular positions at particular institutions.

With this question answered, there is only one other question inherent in your request. The statute quoted above provides that "the \* \* \* civil service commission \* \* \* may authorize higher salary ranges \* \* \* when substantial evidence is presented as to the inability of the state to recruit and retain qualified workers \* \* \*." The Director of the Department of Public Welfare has made a statement that such a condition exists, but, of course, it is within the province of the Commission to decide whether it wishes to require the submission of further evidence and what the nature of such evidence might be.

In view of the above, it is, therefore, my opinion that the word "location," as used in paragraph 8 of Section 486-7b, General Code, may be construed to include a particular institution maintained by the Division of Mental Hygiene of the Department of Public Welfare.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General