

to me that if a motion to take from the chair such business that the chairman refuses or neglects to present to the meeting is proper, the reasoning on that point should apply with equal force in the instant case and a motion ordering the secretary to call the roll and read the minutes of the last meeting would be in order.

The third question for my determination is what, if any, steps can be taken by the board to have the minutes properly authenticated if, after approval by the board, the president refuses to sign the same. The mere failure to conform to parliamentary usage will not invalidate the action when the requisite number of members have agreed to a particular measure. *Madden vs. Smeltz*, 2 O. C. C. 168; *Mann vs. Lemars*, 109 Ia. 244. It was declared in the case of *Corinth vs. Sharp*, 107 Miss. 696, that where facts of the action can be obtained from the record of the council, non-compliance with strict technical rules will not overthrow the action. It is remarked in the case of *Madden vs. Smeltz, supra*, that it is not to be expected that the technical rules of parliamentary law should be vigorously applied to the proceedings of the village council and when the requirements of a statute have been followed in the passage of an ordinance, it is not invalid for the reason that general parliamentary rules governing the action of legislative bodies have not been strictly adhered to. The principle involved in the above cases is the same as that involved in your question, and in view of what has been said above, it appears that when action has been taken by an assembly and that fact recorded in the minutes, a refusal by the president to sign such minutes will not invalidate such action taken and the signing of such minutes by the secretary alone would be sufficient.

Summarizing, it is therefore my opinion that:

1. When the president of a county board of education refuses to put a proper motion to a vote, such motion may be put by the vice-president or any other member of such board.
2. When the president of a county board of education refuses to permit a roll call or a reading of the minutes of the preceding meeting, such roll call and reading of the minutes may be obtained by any member of said board making a motion ordering the secretary to call the roll and read the minutes.
3. The minutes of a meeting of a county board of education, after being approved by the board and signed by the secretary alone, are an authentic record of the action of said board.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3052.

SOLDIERS' RELIEF COMMISSION—PERSON IN EMPLOY THEREOF
 PRIOR TO ENACTMENT OF SEC. 2933-1 ILLEGALLY EMPLOYED—
 WHO MAY BE EMPLOYED BY SAID COMMISSION.

SYLLABUS:

1. *Any person who was prior to the enactment of Section 2933-1, General Code, in the employ of a soldiers' relief commission, was illegally employed and may be summarily dismissed from such employment.*
2. *A soldiers' relief commission may employ only honorably discharged veterans of the war with Spain or the World War as investigators and clerks.*

3. *The provisions of Section 2933-1, General Code, with respect to investigators and clerks employed by soldiers' relief commissions, are not subject to, limited or qualified by Section 486-8 of the General Code, and the Civil Service Commission of Ohio is governed solely by the provisions of Section 2933-1 in determining whether or not a person so employed is in the classified or unclassified service.*

4. *The provisions of Section 2933-1, General Code, with reference to the appointment of investigators and clerks by a soldiers' relief commission, are mandatory.*

5. *A soldiers' relief commission, under the provisions of Section 2933-1, General Code, may only employ as such investigators and clerks honorably discharged soldiers, sailors, marines or nurses of the war with Spain or the World War between April 6, 1917, and November 11, 1918.*

COLUMBUS, OHIO, August 17, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

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

“At the instigation of the soldiers and sailors relief commission of Cuyahoga County, Ohio, your opinion is respectfully requested upon certain questions dealing with the interpretation of Sections 2933-1 and 2933-2 of the General Code.

The questions are as follows:

1. What effect has the law, as it now stands, upon those employees of the commission who are not male veterans but who were in the employ of the commission prior to the enactment of the law as it now stands?

2. May the commission continue to employ non-veterans in any capacity when there are veterans available for the work now being performed by the non-veterans?

3. Is employment, originally secured by Civil Service procedure, protected by Civil Service rules and regulations notwithstanding the working of these sections?

4. Are the provisions of these sections of the Code mandatory?

5. Under the law, may any woman, excepting war nurses, be employed in *any* capacity by the commission?”

I shall answer your questions in the order in which they are set forth in your communication.

Sections 2933-1 and 2933-2, General Code, to which you refer, read as follows:

Sec. 2933-1. “The soldiers' relief commission is hereby empowered to employ such investigators and clerks as may be necessary to carry on relief work when the necessity arises. These investigators and clerks shall be honorably discharged veterans of the war with Spain, or the world war, and shall not be required to take a civil service examination. Their compensation shall be such as established by the soldiers' relief commission, and shall be paid from the county allotment of soldiers' relief funds.”

Sec. 2933-2. "Any portion of the General Code that is in conflict with the above section 2933-1 is hereby repealed."

Prior to the enactment of the above sections (115 O. L. 398), the statutes in force relative to the organization, powers and duties of soldiers' relief commissions (Section 2920, et seq., General Code) contained no provision authorizing the employment of any persons to assist the members of the respective soldiers' relief commissions in the performance of their official duties. In regard thereto, I call attention to an opinion rendered by my predecessor, found in Opinions of the Attorney General for 1931, Vol. III, page 1343, the syllabus of which opinion reads as follows:

"1. Where the duties of an individual member of a soldiers' relief commission are such as to require temporary stenographic or clerical assistance, the cost of the same may be included as an actual expense of such member and allowed by the county commissioners, but no authority exists by virtue of which a soldiers' relief commission may employ clerks and stenographers to assist it in the performance of its duties.

2. A soldiers' relief commission may not employ and compensate persons for making investigations of the applications for soldiers' relief."

In view of the above, it would appear that prior to the enactment of Section 2933-1, supra, there could be no persons legally employed by a soldiers' relief commission and consequently anyone purporting to be an employe could be summarily dismissed and the commission would be empowered to employ under authority of Section 2933-1, supra, and in conformity therewith, such investigators or clerks as may be necessary.

I come to your second question for my determination. As the intention of the legislature embodied in the statute is the law, the fundamental rule of construction is to ascertain and give effect to the intention and purpose of the legislature as expressed in the statute and such intention is to be obtained primarily from the language used in such statute. Where the language is plain and unambiguous, then no more can be necessary than to expound the words used in their natural and ordinary sense and the statute must be given effect according to its plain and obvious meaning. In applying this well recognized principle of statutory construction, it is clear that Section 2933-1, supra, needs no construction. The language thereof is manifestly clear and apparent and I must therefore conclude that none but honorably discharged veterans of the war with Spain and the World War may be employed by a soldiers' relief commission.

I come now to your third question. The question raised is whether the provisions of Section 2933-1, supra, are subject to or limited by paragraph 1, subsection (b) of Section 486-8 of the General Code, which reads as follows:

"(b) 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, to be designated as the competitive class and the unskilled labor class.

1. The competitive class shall include all positions and employments now existing or hereafter created in the state, the counties, cities and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appoint-

ments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by promotion, reinstatement, transfer or reduction, as provided in this act, and the rules of the commission, by appointment from those certified to the appointing officer in accordance with the provisions of this act."

In connection therewith attention is directed to an opinion heretofore rendered by me, appearing in Opinions of the Attorney General for 1933, Vol. III, page 2004, wherein the question presented was whether or not Section 486-8 limited the provisions of Section 154-38a, which reads in part as follows:

"Each of such deputy tax commissioners shall be paid such compensation as the Tax Commission may fix, and shall serve during the pleasure of the Tax Commission. The deputy tax commissioners shall be in the unclassified civil service of the state."

It was stated in said opinion as follows:

"The legislature, in the enactment of section 154-38a * * * has expressly provided therein that the deputy tax commissioners are to be in the unclassified service. The question arises as to whether those positions are to be placed in the unclassified service by the Civil Service Commission without inquiring or determining whether the duties of those positions create a fiduciary relation between the deputy tax commissioners and the Tax Commission of Ohio. In other words, is the Civil Service Commission to be guided solely by the provisions of section 154-38a or shall it take into consideration the conditions set forth by the legislature in paragraph 9 of subsection (a) of section 486-8 in determining whether a person designated by the Tax Commission as a deputy tax commissioner is in the classified or unclassified service?"

The rules of statutory interpretation to be observed in construing the provisions of section 154-38a, in view of the apparent conflict that exists between the provisions of that section and the provision of paragraph 9 of subsection (a) of section 486-8, are stated by Day, Judge, in the case of *Ex Parte Fleming*, 123 O. S. 16, at pages 20 and 21, as follows:

"Where the general provisions of a statute are found to be in conflict with the express provisions of a later act relating to a particular subject, the latter will govern, although the words of the earlier general act, standing alone, would be broad enough to include the subject to which the more particular provisions relate." *Thomas, Sheriff, vs. Evans*, 73 Ohio St., 140, 76 N. E., 862.

"Where the general provisions of a statute and those of a later one on the same subject are incompatible, the provisions of the latter statute must be read as an exception to the provisions of the earlier statute." *City of Cincinnati vs. Holmes, Admr.*, 56 Ohio St., 104, 46 N. E., 514.

In statutory construction it is a well-known rule that, "where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special

will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one." 59 C. J. 1656.'

Applying these rules of statutory interpretation to the statutes in question, the conclusion is irresistible that the Civil Service Commission is to be guided solely by the provisions of section 154-38a in determining whether the persons designated by the Tax Commission of Ohio as deputy tax commissioners are in the unclassified or classified service."

In view of the above, it would therefore appear that the express provision in Section 2933-1, General Code, supra, clearly evinces an intention on the part of the legislature that the conditions or requirements of paragraph 1, subsection (b) of Section 486-8, General Code, are not to be observed and that the provisions of Section 2933-1 in respect to investigators and clerks employed by soldiers' relief commissions are not subject to, limited or qualified by paragraph 1, subsection (b) of Section 486-8, General Code, and that the Civil Service Commission of the state of Ohio is governed solely by the provisions of Section 2933-1, General Code, in determining whether a person, employed as an investigator or clerk by a soldiers' relief commission is in the classified or unclassified service.

Your next inquiry is: Are the provisions of Section 2933-1 mandatory? Said section reads in part as follows:

"These investigators and clerks *shall be honorably discharged veterans* of the war with Spain, or the world war, and *shall not be required to take a civil service examination.*"

There is no universal rule or absolute test by which directory provisions in a statute may in all circumstances be distinguished from those which are mandatory, but in a determination of this question, as in every question of statutory construction, the prime object is to ascertain the legislative intent, from a consideration of the entire statute, its nature and its object. As a general rule the word "shall" is imperative, operating to impose a duty which may be enforced. Of similar effect and import with "shall" is the word "must". 59 C. J. 1072-1080 and cited cases.

In the case of *Devine vs. State, ex rel. Tucker, Jr.*, 105 O. S. 288, it was held that an act of the General Assembly will not be regarded as directory or discretionary as to those upon whom it is intended to operate, unless such directory or discretionary character clearly appears from the entire text of the act.

In the instant case, the language of the statute is plain and peremptory and consequently there is no necessity to construe it and the language is so plain and so imperative in its force that it is clearly mandatory.

The fifth and last question which I shall determine is whether or not under the provisions of Section 2933-1, any woman, excepting a war nurse, may be employed in any capacity by a soldiers' relief commission. Again, attention is called to the language of the statute which empowers a soldiers' relief commission to employ only investigators and clerks, and that such investigators and clerks shall be honorably discharged veterans of the war with Spain or the world war. The term "veteran", as used in connection with the World War Veterans Adjusted Compensation Act, is defined by statute in Title 38, Section 592, United States Code, to include "any individual or member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918."

Section 486-10 of the General Code of Ohio, which provides that additional credit be given to veterans in civil service examinations, enumerates the following as veterans:

"Any soldier, sailor, marine, member of the army nurse corps or Red Cross nurse who has served in the army, navy or hospital service of the United States in the war of the rebellion, the war with Spain, or the war with the central powers of Europe between the dates of April 6th, 1917 and November 11th, 1918, who has been honorably discharged therefrom".

In the case before us, from the language employed in the statute, the legislature has clearly expressed itself as to who shall be employed by soldiers' relief commissions, and it therefore seems clear that no one may be employed in any capacity by a soldiers' relief commission other than an investigator or clerk, and a person so employed must be an honorably discharged soldier, sailor, marine or nurse who has served in the war with Spain or in the World War between April 6, 1917 and November 11, 1918.

In view of the discussion herein and in specific answer to your several questions, I am of the opinion that:

1. Any person who was prior to the enactment of Section 2933-1, General Code, in the employ of a soldiers' relief commission, was illegally employed and may be summarily dismissed from such employment.

2. A soldiers' relief commission may employ only honorably discharged veterans of the war with Spain or the World War as investigators and clerks.

3. The provisions of Section 2933-1, General Code, with respect to investigators and clerks employed by soldiers' relief commissions, are not subject, limited or qualified by Section 486-8 of the General Code, and the Civil Service Commission of Ohio is governed solely by the provisions of Section 2933-1 in determining whether or not a person so employed is in the classified or unclassified service.

4. The provisions of Section 2933-1, General Code, with reference to the appointment of investigators and clerks by a soldiers' relief commission, are mandatory.

5. A soldiers' relief commission, under the provisions of Section 2933-1, General Code, may only employ as such investigators and clerks honorably discharged soldiers, sailors, marines or nurses of the war with Spain or the World War between April 6, 1917 and November 11, 1918.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3053.

INMATE—PROCEEDINGS TO LEGALLY PRESUME DEAD INSTITUTED
WHEN—DISPOSITION OF MONEY ON DEPOSIT BY INMATE.

SYLLABUS:

Proceedings may be instituted under Sections 10509-25, et seq., General Code, to have legally presumed dead an inmate of a state institution who has escaped and not been heard from for seven or more years, and money on deposit in the name