

trustee and member of the board of deputy state supervisors of elections are incompatible, and may not be held at the same time by the same person.

Respectfully,

GILBERT BETTMAN,
Attorney General.

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MUNICIPAL CIVIL SERVICE COMMISSION—ACTING AS AGENT OF
STATE COMMISSION—FEES COLLECTED FROM EXAMINATIONS
SHOULD BE PAID INTO STATE TREASURY.

SYLLABUS:

Under the terms of Section 486-11, of the General Code, all fees collected by virtue of the provisions of this section by a municipal civil service commission designated by the State Civil Service Commission as its agent, for the purpose of carrying out the provisions of the civil service act within a county, should be paid into the state treasury, to the credit of the general revenue fund.

COLUMBUS, OHIO, September 11, 1929.

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

GENTLEMEN:—I am in receipt of your letter of recent date which is as follows:

“The City Civil Service Commission of Cleveland is organized in accordance with the provisions of the Cleveland city charter, and has been designated as agent of the State Civil Service Commission, for the purpose of carrying out civil service provisions in relation to county employes (Sec. 486-5, G. C.)

The provisions of Section 486-11, G. C., relative to examination fees, reads:

‘No fee or other assessment shall be charged for examination for positions, provided for by this act or by the rules of the commission prescribed thereunder, where the annual salary does not exceed six hundred dollars; for positions where the annual salary exceeds six hundred dollars and is less than one thousand dollars, an examination fee of fifty cents shall be charged; for positions where the annual salary is one thousand dollars or more, an examination fee of one dollar shall be charged. All fees collected under the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund, or in the case of cities into the city treasury.’

Fees are collected by the Cleveland City Civil Service Commission from applicants for examinations for positions in the county service, and are deposited in the treasury of the city of Cleveland. The county reimburses the city of Cleveland a proportionate amount of the expenses of the City Civil Service Commission.

Question. In view of the provisions of Section 486-11, G. C., should such fees be deposited in the state treasury?”

Section 486-5, General Code, reads in part, as follows:

“ * * * The commission may also appoint such examiners, in-

spectors, clerks and other assistants as may be necessary to carry out the provisions of this act, and fix their salaries within the limits of the appropriation made by the General Assembly for that purpose. The commission may designate persons in or out of the official service of the state to serve as examiners or assistants under its direction.

Each such person shall receive such compensation for each day actually and necessarily spent in the discharge of his duties as examiner or assistant as shall be determined by the commission; provided, however, that if any such examiner or assistant is in the official service of the state, or any political subdivision thereof, it shall be a part of his official duties to render such services in connection with such examination, without extra compensation; *provided, however, that counties of the state in which are located municipalities having local civil service commissions the State Civil Service Commission may designate the local commission of the largest municipality within such county as its agent, for the purpose of carrying out such provisions of this act within said counties, as the state civil service commission may designate from time to time;* and such civil service commissioners shall each receive for this work such reasonable compensation as the boards of county commissioners may determine, and the board of county commissioners of such county, during the time such arrangements shall continue, shall appropriate each year, to be paid out of the county treasury into the treasury of such municipality, a sum sufficient to meet the county's portion of the cost of the work as determined by the number of employes in such classified service. * * * " (Italics the writer's.)

Section 486-11, General Code, as far as it is pertinent to your inquiry, reads as follows:

" * * * No fee or other assessment shall be charged for examination for positions, provided for by this act or by the rules of the commission prescribed thereunder, where the annual salary does not exceed six hundred dollars; for positions where the annual salary exceeds six hundred dollars and is less than one thousand dollars, an examination fee of fifty cents shall be charged; for positions where the annual salary is one thousand dollars or more, an examination fee of one dollar shall be charged. *All fees collected under the provisions of this act shall be paid into the state treasury to the credit of the general revenue fund, or in the case of cities into the city treasury.* * * * " (Italics the writer's.)

Under the provisions of the civil service act, Sections 486-1 to 486-31, inclusive, of the General Code, the State Civil Service Commission is empowered to carry out the provisions of the act with reference to the state civil service which includes all offices and positions of trust or employment of the state or counties.

Section 486-10 of the General Code provides for the appointment of the Municipal Civil Service Commission by the mayor or other chief appointing authority of a municipality, and prescribes the duties of this commission with reference to carrying out the provisions of the civil service act within the municipality and of the city school district within which the city is located.

Municipalities may also, by the adoption of a charter, provide for the appointment of the Municipal Civil Service Commission, and prescribe its duties with reference to the civil service of the municipality. The Legislature, by the use of clear and unambiguous language, provided in Section 486-5 of the General Code, that,

when a Municipal Civil Service Commission carries out the provisions of the civil service act for the county, such commission acts as agent for the State Civil Service Commission.

The commissioners of a Municipal Civil Service Commission, when designated to carry out the purposes of the civil service act in county cases, act in the same capacity as any other examiners, inspectors, clerks or assistants appointed or designated by the State Civil Service Commission to carry out the purposes of the civil service act.

In county cases, the municipal commission loses its identity as such, and the commissioners are merely agents of the State Civil Service Commission.

It cannot be urged successfully, that the agents designated therein may, in their discretion, pay fees collected under the provisions of Section 486-11 of the General Code, into the state or city treasury, for the agents of the State Civil Service Commission are required to pay the fees collected from applicants for examination for positions under civil service into the state treasury, and the same is true even though the agents of the State Civil Service Commission are municipal civil service commissioners.

The purpose of charging fees, as provided in Section 486-11 of the General Code, is apparently to help defray the expenses of the Civil Service Commission. A municipality does not pay the compensation or the expenses of the commissioners, when they act as agents of the State Civil Service Commission in civil service matters of the county. The expenses of a municipal civil service commission designated to act in county matters are paid out of the county treasury by an appropriation made each year by the county commissioners of a sum sufficient to meet the county's portion of the costs of the work, as determined by the number of employes in the county classified service. The compensation of a municipal civil service commission acting as agent of the State Civil Service Commission is also paid out of the county treasury.

It appears to me that the Legislature intended that fees collected from applicants, for examination for positions under civil service, should be paid into the city treasury only in such cases where the applicants take examinations for positions in the civil service of the municipality or the city school district in which the municipality is located.

I am therefore of the opinion that, under the terms of Section 486-11 of the General Code, all fees collected by virtue of the provisions of this section by a municipal civil service commission designated by the State Civil Service Commission to act as its agent for the purpose of carrying out the provisions of the civil service act within a county, should be paid into the state treasury to the credit of the general revenue fund.

Respectfully,

GILBERT BETTMAN,
Attorney General.