

"The oath of office of every other officer, deputy or clerk, shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office."

A member of the State Board of Pharmacy is not required to give a bond and the only other requirement for qualifying for the office would therefore be the taking of the oath of office prescribed in sections 2 and 3 of the General Code, supra. In other words having been appointed by the governor and the appointment confirmed by the senate, the only remaining act to be done by the appointee in order to qualify is to take an oath of office.

For the reasons above stated it is my opinion that when a person has been appointed by the governor as a member of the State Board of Pharmacy to succeed a member whose term has expired and such appointment has been confirmed by the senate he becomes a member of said board when he has qualified by taking an oath of office and that his term of office began to run as of April 1st of the year in which the term of his predecessor expired.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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PROBATION OFFICER—EXPIRATION OF TERM—WHETHER OR NOT
UNDER CIVIL SERVICE.

SYLLABUS:

1. *A chief probation officer appointed by the juvenile court under the provisions of Section 1662, General Code, is within the unclassified or classified civil service depending upon whether he is selected as one of the exemptions of the court under favor of sub-section 8 of Section 486-8a, General Code.*

2. *If so selected his term ends with the expiration of the term of office or the death of the judge making the appointment and he has no further claim upon such office unless he is reappointed by the incoming juvenile judge.*

COLUMBUS, OHIO, April 2, 1927.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent request for an opinion which reads as follows:

"Due to the death of Judge Willard J. Wright, Judge of the Court of Common Pleas of Warren County, Ohio, a vacancy occurred in said office and on March 23rd, 1927, the Governor appointed Hon. Charles B. Dechant to fill the vacancy so caused, until the next general election.

If Judge Dechant should be designated as the Juvenile Judge of Warren county, Ohio, under the terms and provisions of Section 1639 of the General Code, and appoints a chief probation officer under the authority of Section 1662 of the General Code, I am respectfully requesting the opinion of your department as to whether or not said chief probation officer's term will expire at the expiration of said judge's term, or will said chief probation officer be under civil service, and hold said office under the rules and regulations governing civil service appointees."

Section 1639, General Code, referred to in your letter, confers jurisdiction in juvenile cases upon common pleas courts, probate courts and insolvency and superior courts where established, and further provides that the judges of such courts in each county, at such time as they determine, shall designate one of their number to transact the business arising under such jurisdiction.

Section 1662, General Code, provides in part:

“The judge designated to exercise jurisdiction may appoint one or more discreet persons of good moral character, one or more of whom may be a woman, to serve as probation officers, during the pleasure of the judge. One of such officers shall be taken as chief probation officer and there may be one or more assistants. * * *

Section 1662 also provides that the judge making the appointment shall fix the salaries of the chief and assistant probation officers and may increase or decrease the same at any time limiting the maximum of such salary, however, to \$4,000.00 for chief probation officer and \$2,400.00 for each assistant.

Your specific question is as to whether or not the term of chief probation officer ends with the expiration of the term of the judge appointing him or whether said chief probation officer falls within the classified civil service and holds said office under the rules and regulations governing persons in the classified civil service.

Section 486-8, General Code, divides the civil service of the state and the several counties, cities and city school districts thereof, into the classified and unclassified civil service. In the unclassified civil service are included the following:

“* * *

8. Three secretaries, assistants or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards or commissions, except civil service commissions, authorized by law to appoint such secretary, assistant, or clerk and stenographer.

* * *

10. Bailiffs, constables, official stenographers and commissioners of courts of record, and such officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination.

* * *

Your question was passed upon in an opinion by this department rendered March 8, 1917, reported in Opinions of the Attorney General for 1917, Vol. I, page 209. The syllabus of that opinion reads as follows:

“Whether the chief probation officer and first assistant probation officer of juvenile courts are in the classified or unclassified service of the state, is a question of mixed law and fact to be submitted, in the first instance, to the civil service commission.

Such officers are assistants of such courts and may be appointed as such, under favor of subsection 8 of the civil service law, as in the unclassified service.”

As set out in sub-section 10 of Section 486-8a, supra, the unclassified civil service includes “such officers and employes of courts of record as the commission may find it impracticable to determine their fitness by competitive examination.”

As stated in the opinion above referred to it cannot be said as a matter of law that the merit or fitness of chief probation officer and assistant probation officers cannot be determined by an examination, nor has the civil service commission of Ohio so determined. These officers, therefore, would generally come under the class of positions included in the classified civil service unless their right to be exempted from the classified civil service be found in some other provision of the civil service act. Although Section 1662, General Code, supra, provides that the chief probation officer shall serve during the pleasure of the judge the provisions of the civil service law being a later enactment supersede the above provision.

The only other provision of the civil service act under which the position of chief probation officer might be held to fall within the unclassified civil service is sub-section 8 of Section 486-8a above quoted. That section exempts from the classified civil service two secretaries, assistants or clerks and one personal stenographer for elective officers other than state officers. In the 1917 opinion above referred to, it was held that while a probation officer is not called an "assistant" his duties are such as are directly in line with that which is within the jurisdiction and power and duty of the court and that such officer is in the general and ordinary acceptance of the word an assistant of the court. On page 210 it is said:

"A probation officer is not a secretary or a clerk, or a stenographer, but such officer is provided for in Section 1662 G. C., the pertinent part of which is as follows:

"The judge * * * may appoint one or more discreet persons * * * to serve as probation officers, during the pleasure of the judge. One of such officers shall be known as chief probation officer and there may be first, second and third assistants. * * * The judge may appoint other probation officers, with or without compensation. * * *"

The duties of the probation officer are provided in Section 1663 G. C. as follows:

"When a complaint is made or filed against a minor, the probation officer shall inquire into and make examination and investigation into the facts and circumstances surrounding the alleged delinquency, neglect or dependency, the parentage and surroundings of such minor, his exact age, habits, school record, and every fact that will tend to throw light upon his life and character. He shall be present in court to represent the interests of the child when the case is heard, furnish to the judge such information and assistance as he may require, and take charge of any child before and after the trial as the judge may direct. * * *"

This designation of duties seems clearly to constitute the officer performing them an assistant of the court. True, he is not called such, the word "assistant" being used only with reference to the subofficers who are designated as assistants to the probation officer himself. However, the things that the probation officer is authorized and required to do are so directly in line with that which is within the jurisdiction and power and duty of the court, that such officer is, in the general and ordinary acceptance of the word, an assistant of the court, as he performs such duties as inquiring into and making examination and investigation of facts, etc., furnishing the judge information and *assistance*, taking charge of the child as the judge may direct, etc."

For the reasons above stated I am of the opinion that the chief probation officer may be selected as an *assistant* as authorized in sub-section 8 of Section 486-8a and if so selected would be in the unclassified civil service of the state.

Should such officer be selected by the court under favor of sub-section 8 of Section

486-8a, your further question is as to whether or not the term of such probation officer ends at the expiration of the term of the judge making the appointment.

The term of a deputy, assistant or employe who holds his position by virtue of an appointment thereto and whose term is not fixed by statute is co-extensive with the term of the officer making the appointment and upon the expiration of the term or the death of the person making the appointment the appointee has no claim upon the office or its emoluments. In other words the term of the deputy or assistant ends with the expiration of the term or death of his superior. *Throop on Public Officers, Section 304; 29 Cyc. 1395; State ex rel. vs. Cooper, 12 O. N. P. (N. S.) 659; Lessee of Anderson vs. Brown, 9 Ohio 151; State ex rel. Willis vs. Taylor, 3 O. N. P. (N. S.) 505.*

In *Throop on Public Officers, Section 582*, it is said:

“A deputy’s commission, in the absence of any statutory provision to the contrary, runs only while the principal’s term lasts; if the principal is re-elected or re-appointed, the deputy must be appointed anew. And where the office of sheriff devolves, under the statute, upon the under sheriff, by the death, resignation, or removal of the sheriff, a general deputy of the former sheriff cannot continue to exercise his office, without a new appointment from the under sheriff, upon whom the office has devolved, which must be executed with the formalities required by law, in the case of an original appointment, and a new oath of office must be taken.”

In the case of *Lessee of Anderson vs. Brown, 9 Ohio, 151*, a deputy sheriff executed a deed in his own name, which deed should have been made in the name of the sheriff, and the deed was acknowledged after the death of the sheriff. The court held the deed wrong for two reasons:

1. That the deed should have been made in the name of the sheriff and the act of the deputy in making the deed in his own name was void, and
2. That the acknowledgment of the deed was void likewise for it was not made until after the death of the principal.

On this point the court says:

“The acknowledgment of the deed was void likewise, for it was not until 1836, after the death of the principal. As the act of the agent acquires validity, because it is the act of the constituent, his power ceases when the capacity of the principal ends.”

It is therefore my opinion that if the chief probation officer is appointed by the juvenile court as an assistant under favor of sub-section 8 of Section 486-8a of the General Code he is in the unclassified civil service and his term as such chief probation officer ends with the expiration of the term of office or the death of the judge so appointing him.

Respectfully,
EDWARD C. TURNER,
Attorney General.