

APRIL 11, 1949.

DR. WILLIAM S. CARPENTER, *President,*
Department of Civil Service,
State House.

FORMAL OPINION—1949. No. 33.

DEAR SIR:

I have your memorandum of the 1st instant, stating that request has been received by your Commission for approval of an appointment to a position in the office of the State Athletic Commissioner, a position formerly in the unclassified service.

The question is whether the new employee remains in such unclassified service.

In my opinion, he does. The office of the State Athletic Commissioner was created by Chapter 143 of the Laws of 1931, and was continued by Chapter 2 of Title 5 of the Revised Statutes (R. S. 5:2-1, et seq.); and by R. S. 5:2-4 the appointments authorized by that section, including inspectors, referees and other officials and clerical help, were not subject to the provisions of your Civil Service Law.

By Chapter 445 of the Laws of 1948 a Department of State was created as one of the principal departments in the Executive Branch of the State Government; and by Section 4 of that act the office of the State Athletic Commissioner, together with all his functions, powers and duties, was continued, but such office was transferred to the Department of State established under said act; and by Section 7 of said act the functions, powers, duties, records and property of the existing State Athletic Commissioner were transferred to and vested in the State Athletic Commissioner designated as the head of the office of State Athletic Commissioner in the Department of State, to be exercised and used by him pursuant to the provisions of said act, and as otherwise provided by law.

By Section 8 of said act the Athletic Commissioner has no authority to appoint, employ or remove any clerical personnel in his office, and the authority to employ or remove, fix the compensation of such clerical employees was vested in the Secretary of State, and such employees as were retained (Section 9) were transferred to the Department of State, to be assigned by the Secretary of State for the performance of duties. Nowhere in the act of 1948 is there the slightest indication of legislative intention to place new employees of the Athletic Commissioner in the classified service. Had the Legislature such a thought in mind it would have directed the classification of such employees. It is my judgment that employees appointed by the Secretary of State for work in the office of the State Athletic Commissioner still remain in the unclassified service, notwithstanding they may have been transferred under the new Department of State law to the latter department.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.