

July 12, 1949.

HON. J. LINDSAY DEVALLIERE,  
*Division of Budget and Accounting,*  
*Department of the Treasury,*  
State House,  
Trenton, New Jersey.

## FORMAL OPINION—1949. No. 77.

DEAR MR. DEVALLIERE:

Inquiries from your office and from the State Boards of Nursing and Pharmacy, respectively, have raised the question whether either of these Boards has the right to determine the salary increases to be granted to its employees as of July 1, 1949, and to have funds to cover these increases released, if the Board has not submitted a schedule of its titles and salary ranges to the Civil Service Commission and has not received from the Commission a determination placing the Board's employees in the classified or unclassified service. In my opinion, the answer is "No."

The key proposition here is that the Civil Service Law applies generally to employees of the State Professional Boards as it does to those of any other arm of the State government.

The Constitution of 1947 embodies the fundamental civil service principle in Article VIII, Section 1, paragraph 2, as follows:

"Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive."

The Constitution thus adopted the policy of the State as previously established by the Civil Service Law (N. J. S. A. 11:4-2). The purpose of that law, in its own language (11:4-1) is to provide "a modern personnel system for positions in the classified service," and the classified service is defined as follows (11:4-3):

"Classified Service" means, unless otherwise provided in this subtitle, *all positions in the State service*, whether paid or unpaid, full time or part time, whether existing or hereafter created, except positions held by persons enumerated in section 11:4-4 of this title." (Emphasis supplied.)

In determining the applicability of this section and of the Civil Service Law generally, the courts have declared that the essential inquiry is whether the incumbent is "in the paid service of the State." *Newark Library Trustees vs. Civil Service Commission*, 86 N. J. L. 307; 90 Atl. 261; *Martini vs. Civil Service Commission*, 129 N. J. L. 599, 30 Atl. (2d) 569. In the last cited case the former Supreme Court applied the statutory definition of "unclassified service" to the position of clerk to the First Criminal Judicial District Court of Hudson County, and held that even though the statute creating that office contained no provision one way or the other as to the applicability of the Civil Service Law, the position was one in the classified service. Citing several similar cases, the Court said (129 N. J. L. 601): "To hold otherwise would be to render nugatory the policy and purpose sought to be effectuated by our Civil Service Law."

Likewise, in *Sullivan vs. McOsker*, 84 N. J. L. 380, 86 Atl. 497, where the warden of the Hudson County Jail was held to be within the protection of the Civil Service Law, the Court of Errors and Appeals declared (84 N. J. L. 385):

"In order to carry out the legislative policy which had in view the welfare of the people, in that, it may receive good and efficient service from its public servants the widest range should be given to the applicability of the law."

So here, inasmuch as the employees of the Boards in question are plainly in the State service and are paid from State funds, it follows that the Civil Service Law applies and that except as the positions involved have been placed in the unclassified category—either by statute or by the Civil Service Commission—they are to be deemed classified.

The positions held by employees of the Boards do not fall within the categories declared by the Civil Service Law to be unclassified (11:4-4), except as one or more of such positions may come within the provision pertaining to the employment by each Board of "one clerk or secretary and one confidential employee or agent" whom the Board has certified to the Civil Service Commission as "essential to the work of" the Board (11:4-4, par. m). Nor is there any other law which, in my opinion, places the employees of the Boards generally in the unclassified service.

With respect to the Board of Nursing, the statute prior to 1948 authorized it to "determine and pay reasonable compensation" to its employees (45:11-24, par. 5), and this as well as other expenses of the Board were to be paid from fees and penalties received and recovered by it (45:11-31).

Chapter 439, P. L. 1948, placed the Professional Boards in the Department of Law and Public Safety, but provided that each Board "shall continue to have all of the powers and shall exercise all of the functions and duties vested in, or imposed upon, it by law" (Section 30). The statute further provided (Section 33):

"The authority, vested pursuant to existing law in any of the respective boards enumerated in section twenty-nine hereof, or in any member or officer thereof, to appoint, employ or remove any officer or employee shall continue to be exercised by such board; *provided, however*, that the appointment, employment or removal of any such officer or employee shall be subject to the approval of the Attorney General. Persons thus appointed or employed shall be assigned to such duties as such board shall prescribe, and shall receive such compensation as shall be fixed by such board within the limits of available appropriations therefor."

These statutes must be construed in connection with other laws existing at the time or subsequently enacted, in order to discern if possible a consistent legislative scheme. Hence, it is my opinion that for those employees within the classified service, the Board's power to fix compensation may be exercised only within the ranges allocated by the Civil Service Commission to the positions held. Salaries for unclassified positions may be fixed by each Board as heretofore, within the limits of the appropriation for its use, and subject to the approval of the Attorney General.

For positions in the classified service, the Civil Service Law directs the Chief Examiner and Secretary of the Commission to prepare a schedule of compensation for each class (11:6-2, par. c); and when such schedules are adopted by the Commission (11:5-1, par. b), the Chief Examiner and Secretary must regulate the compensation of employees in the classified service in accordance with such schedules