

File No. 92102

May 26, 1954

Mr. Thomas J. Murphy, Secretary  
City Service Commission  
City Hall  
Baltimore - 2, Maryland

RE: Hiring by Department of Education  
of Secondary School Physicians on a  
Contract Basis.

Dear Mr. Murphy:

You have inquired as to whether or not the Department of Education can, within the purview of the Charter provisions relating to the City Service Commission, legally employ secondary school physicians on a contract basis. You indicate that this is done in the case of part time physicians in the Health Department, and you question whether the Charter permits the engaging of services of this kind on a contract basis in either of the two Departments. The basis of your doubt seems to lie in the fact that these physicians, although on a part time basis, perform their services with such regularity as to bring them within the provisions of the City Service law. You correctly point out that the Commission has broad discretion as to whether positions shall be placed in the exempt or non-competitive class, both of which are in the classified service. Your sole point of inquiry, therefore, is the legality of such contracts of employment.

This office has held on two previous occasions that the City has a right to contract for personal services so long as such contracting would not violate the letter and spirit of the Charter provisions setting up the City Service Commission and creating the Classified Service. We refer to the opinion of September 11, 1942, (see Opinions of City Solicitor, Vol. 41, p. 260) regarding the hiring of visiting physicians at the Baltimore City Hospitals. It was here held that where the positions were not identical with or analogous to classifications already set up or where by the nature of the services rendered it would be inadvisable to go through the formal routine of appointment, the City should not be precluded from performing necessary functions by reason of its inability to secure such employment by contract. This opinion confirmed the similar reasoning in a previous opinion authorizing the hiring of musicians on a contract basis (see Opinions of City Solicitor, Vol. 41, p. 217).

We do not believe that the regularity with which certain services are performed is the standard to follow in cases such as this. The more accurate standard is,