

**Note from the Attorney General's Office:**

1977 Op. Att'y Gen. No. 77-015 was overruled in part by  
2013 Op. Att'y Gen. No. 2013-033.

**OPINION NO. 77-015****Syllabus:**

1. County boards and county officers are required to comply with the rules adopted by the Director of Administrative Services pursuant to R.C. 124.09 and R.C. 124.20.
2. The failure of an appointing authority to comply with PL 3-02 or PL 3-03, Rules of the Director of Administrative Services, in claiming the exemption of a position from the classified service under R.C. 124.11(A) (8) or R.C. 124.11(A) (9) will prevent such appointing authority from subsequently arguing that the position is in the unclassified service. Unless an exemption has previously been claimed, the position may, pursuant to such rules, be considered as in the classified service.
3. The failure of an appointing authority to comply with PL 3-02 or PL 3-03, Rules of the Director of Adminis-

trative Services, in claiming an exemption of a position from the classified service does not operate under R.C. 124.55 to preclude payment of compensation to the employee holding that position, provided his employment is otherwise in accordance with R.C. Chapter 124 and the rules adopted thereunder.

---

**To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio**  
**By: William J. Brown, Attorney General, March 17, 1977**

Your request for my opinion poses the following questions:

1. Are county boards and elected officials mandatorily required to comply with the administrative rules of the Director of Administrative Services?
2. If your answer to the above question is in the affirmative, then will the failure of any county board or elected county official to comply with PL 3-02 and PL 3-03 necessarily result in all county employees, or at least those county employees under the control of said board or elected county official failing to so comply, be considered to be in the classified Civil Service by both the Ohio Department of Administrative Services and the Personnel Board of Review?
3. If your answer to questions 1 and 2 are yes, then what obligations are imposed upon the Auditor of Montgomery County, Ohio by virtue of Section 124.55, Revised Code, should a county official or county board not comply with either PL 3-02 and PL 3-03 or Directive 76-42?

With respect to your first question, the authority of the Director of Administrative Services to adopt rules is set forth in R.C. 124.09, which reads in pertinent part:

"The director of administrative services shall:

(A) Subject to approval, disapproval, or modification by the state personnel board of review, prescribe, amend, and enforce administrative rules for the purpose of carrying out the functions, powers and duties vested in and imposed upon him by this chapter.

In addition R.C. 124.20 provides that:

"The director administrative services with the approval of the state personnel board of review, shall put into effect rules:

(A) For the classification of officers, positions, and employments, in the civil

service of the state and the several counties thereof;

(B) For appointment, promotions, transfers, layoffs, suspensions, reductions, reinstatements, and removals therein and examinations and registrations therefor;

(C) For maintaining and keeping records of the efficiency of officers and employees in accordance with sections 124.01 to 124.64 of the Revised Code.

"The director's rules provided for in this section shall be subject to approval, disapproval, or modification by the state personnel board of review.

"Due notice of the contents of such rules and of all changes therein shall be given to appointing authorities affected by such rules, and such rules shall also be printed for public distribution."

It is clear then that the General Assembly in providing for the civil service of the state and counties has charged the Director of Administrative Services to adopt reasonable administrative rules necessary to enforce those provisions. See State, ex rel. Neffner v. Hummell, 142 Ohio St. 324, 330 (1943); State, ex rel. Myers v. Blake, 121 Ohio St. 511, 514 (1929). To the extent then that such rules are applicable to county appointing authorities compliance with the rules is mandatory. It may be noted, of course, that under both R.C. 124.09 and R.C. 124.20 rules are subject to the approval of the State Personnel Board of Review.

The specific concern expressed by your second question is with PL 3-02 and PL 3-03, Rules of the Director of Administrative Services. These rules relate to the designation of certain positions as being in the unclassified civil service pursuant to R.C. 124.11(A)(8) and R.C. 124.11(A)(9). To this end R.C. 124.11(A)(8) provides for an exemption from the classified service of a limited number of secretaries, clerks, stenographers and other assistants for elective officers and principal appointive executive officers, boards, or commissions. R.C. 124.11(A)(9) authorizes an exemption from the classified service for deputies and assistants holding a fiduciary or administrative relationship to elective or principal executive officers, as well as employees whose fitness would be impracticable to determine by competitive examination.

PL 3-02 and PL 3-03 require appointing authorities to give notice to the Department of Administrative Services of an intention to treat certain positions as in the unclassified service under R.C. 124.11(A)(8) or R.C. 124.11(A)(9). With respect to unclassified employees under R.C. 124.11(A)(8), PL 3-02 requires an officer to give such notice within sixty days after taking office. The rule further provides that, if at the expiration of the sixty days positions have not been so designated, the Department will continue to treat as unclassified positions those which

were previously designated and treated as such. Similarly, in the case of unclassified positions under R.C. 124.11(A) (9) PL 3-03 requires the notice submitted to contain a statement of the duties of such employees showing that they are in fact authorized to act for and in place of their principals or are performing duties of a confidential and fiduciary nature.

As discussed above the rules of the Director Administrative Services, adopted pursuant to R.C. 124.09 and R.C. 124.20, are binding on appointing authorities. The statutes, therefore, require compliance with such rules by an appointing authority seeking an exemption from the classified service for certain positions pursuant to R.C. 124.11(A) (8) and R.C. 124.11(A) (9). In the absence of such compliance with the rules, it has been held that an appointing authority may not claim that the employees are in the unclassified service. See Henslee v. State Personnel Bd. of Review, 15 Ohio App. 2d 84 (1968); State ex rel. Shriver v. Ellis, 49 Ohio L. Abs. 161 (App., 1946).

In Henslee v. State Personnel Bd. of Review, *supra*, the Court upon review of the record before it opined that there was no basis to support the conclusion that the appellant's position was in the unclassified service. It noted in pertinent part at p. 87 that:

". . . (T)he provisions of Section 143.08 (A) [now 124.11(A)], Revised Code, for the exemption of job positions of the types defined therein are not self-executing. The manner of obtaining exemption for a particular position is regulated by rules of procedure prescribed by regulations duly adopted. . . ." (bracketed material added)

Therefore, in response to your second question the failure of a county board or officer to comply with PL 3-02 and PL 3-03 in claiming exemptions from the classified service for positions described in R.C. 124.11(A) (8) or R.C. 124.11(A) (9) will result in such positions being considered as in the classified service, unless previously exempted in accordance with applicable statutes and rules.

In regard to your third question, Directive 76-42, to which you refer, was issued by the Director of Administrative Services and calls attention to PL 3-02 and PL 3-03 and the notice requirements therein for claiming exemptions from the classified service pursuant to R.C. 124.11(A) (8) and R.C. 124.11(A) (9). Your question concerns the effect of R.C. 124.55 on the county auditor in the event that a county appointing authority does not give proper notice in accordance with PL 3-02 or PL 3-03. The first paragraph of R.C. 124.55 prohibits a county auditor from issuing a warrant to pay any salary or compensation to an employee in the classified service, unless the Director of Administrative Services has certified that the person is employed pursuant to R.C. Chapter 124 and the rules adopted thereunder.

The failure of an appointing authority to give proper notice under PL 3-02 or PL 3-03 of an intention to claim an

exemption from the classified service, and to treat certain positions as in the unclassified service, does not in itself render illegal the employment of persons in those positions. As a practical matter, it is by the operation of those rules that such positions are considered as being in the classified service. Therefore, provided the employment of a person in the classified service is otherwise in accordance with R.C. Chapter 124 and the rules adopted thereunder, the failure of an appointing authority to file a notice pursuant to PL 3-02 or PL 3-03 exempting the position from the classified service does not operate to preclude under R.C. 124.55 the payment of compensation to such employees.

In specific answer to your questions it is my opinion and you are so advised that:

1. County boards and county officers are required to comply with the rules adopted by the Director of Administrative Services pursuant to R.C. 124.09 and R.C. 124.20.
2. The failure of an appointing authority to comply with PL 3-02 or PL 3-03, Rules of the Director of Administrative Services, in claiming the exemption of a position from the classified service under R.C. 124.11(A)(8) or R.C. 124.11(A)(9) will prevent such appointing authority from subsequently arguing that the position is in the unclassified service. Unless an exemption has previously been claimed, the position may, pursuant to such rules, be considered as in the classified service.
3. The failure of an appointing authority to comply with PL 3-02 or PL 3-03, Rules of the Director of Administrative Services, in claiming an exemption of a position from the classified service does not operate under R.C. 124.55 to preclude payment of compensation to the employee holding that position, provided his employment is otherwise in accordance with R.C. Chapter 124 and the rules adopted thereunder.