

OPINION NO. 72-045

Syllabus:

Under Section 143.08 (A) (8), Revised Code, only a principal appointive executive officer, board, or commission, authorized to appoint secretaries, assistants, clerks and stenographers, is entitled to the services of one unclassified stenographer and two other unclassified employees who may be either secretaries, assistants or clerks. In a school district only the board of education itself meets these requirements.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William J. Brown, Attorney General, May 26, 1972

You have requested my opinion as to the civil service status of secretaries, assistants, clerks and stenographers assigned to various officials of a school district within your county.

The facts are stated as follows in the material accompanying your request:

"The * * * School District has within its system a Superintendent of schools, a Clerk-Treasurer and a Business Manager. It further has various named directors of departments, supervisors, administrators, principals and assistant principals of the various schools in the district. At the present time all of the aforementioned persons have secretaries, assistants, clerks or personal stenographers who are in the unclassified service. I do not believe that there is any question but that the Superintendent of schools, the Clerk-Treasurer and the Business Manager are entitled to two secretaries, assistants or clerks and one personal stenographer in the unclassified service as provided in Ohio Revised Code Section 143.08 part (8), however, the question to which I would appreciate an answer is 'whether all other directors of departments, supervisors, administrators, principals and assistant principals are entitled to two secretaries, assistants or clerks and one personal stenographer in the unclassified service as provided in Ohio Revised Code Section 143.08, part (8), or whether such secretaries, assistants, clerks or stenographers must be in the classified service on the vacancies filled from the appropriate eligibility list?'"

Section 143.08, Revised Code, provides for a division in the civil service system between classified and unclassified employees. Subsection (A) carefully specifies all positions which are comprised within the unclassified service. Subsection (B) provides that all other positions within the civil service system, except those already specifically mentioned in Subsection (A), supra, shall be deemed classified. The pertinent parts of Section 143.08, supra, read as follows:

"The civil service of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof shall

be divided into the unclassified service and the classified service.

"(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by sections 143.01 to 143.48, inclusive, of the Revised Code:

" * * * * *

"(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 to appoint such secretary, assistant, or clerk and stenographer;

" * * * * *

"(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

" * * * * *

The answer to your question depends upon which officials of the school district can, within the meaning of Subsection (8), supra, be considered "principal appointive executive officers, boards, or commissions" who are "authorized to appoint" secretaries, assistants, clerks and stenographers. Principal executive officers must have a close fiduciary relationship with their immediate assistants, and the purpose of Section 143.08 (A) (8), supra, was to enable such officials to obtain assistants of strict integrity and high moral character, qualities more readily ascertained by long association and observation than by a competitive examination. State, ex rel. Bryson v. Smith, 101 Ohio St. 203, 208-211 (1920); State, ex rel. Myers v. Blake, 121 Ohio St. 511 (1929); State, ex rel. Day v. Emmons, 126 Ohio St. 19, 22-23 (1932); State, ex rel. Townsend v. Berning, 135 Ohio St. 31 (1939).

Such principal executive officers, and only such, are entitled under Subsection (8), supra, to three unclassified employees, one stenographer and two others who may be either secretaries, assistants or clerks. Upon consideration of Section 486-8 (a) 8, General Code (which is almost identical with Subsection 8, supra), one of my predecessors held that the state armory board was not entitled to unclassified secretaries, assistants, clerks or stenographers because it was not authorized to appoint such employees. The board was required to utilize classified personnel from the Adjutant General's Department. Opinion No. 830, Opinions of the Attorney General for 1915. And a later Attorney General

held that the commissioner of motor vehicles, who was authorized to appoint such employees, was not entitled to choose unclassified personnel because he was not a principal executive officer but only a subordinate of the secretary of state. Opinion No. 121, Opinions of the Attorney General for 1927. See also Deering v. Hirsch, 146 Ohio St. 288 (1946); State, ex rel. City v. Urner, 147 Ohio St. 305 (1947); Opinion No. 2657, Opinions of the Attorney General for 1940; Opinion No. 4562, Opinions of the Attorney General for 1941; Opinion No. 2764, Opinions of the Attorney General for 1962. These two Opinions indicate that to be eligible under Subsection (8), supra, an official must be both a principal executive and have the authority to appoint secretaries, assistants, clerks and stenographers.

The question, then, is whether any of the school district officials mentioned in your letter are principal executive officers who have the power to appoint secretaries, assistants, clerks or stenographers. I think it clear that none of them meet the requirements of Subsection (8), supra. The board of education itself is the principal executive power of the school district. The board may appoint administrative officers, supervisors and special teachers (Section 3319.02, Revised Code), and it may appoint regular teachers upon nomination by the superintendent (Section 3319.07, Revised Code). It may appoint a business manager (Section 3319.03, Revised Code) who, among other duties,

"* * * shall appoint and may discharge,
subject to confirmation by the Board, nonedu-
cational employees, * * *."
(Section 3319.04, Revised Code)

But if it does not appoint a business manager, the board itself retains and exercises the power to appoint noneducational employees; and, if it does appoint a manager, it still remains the principal executive of the school district through its right of confirmation. The business manager, like the commissioner of motor vehicles in Opinion No. 121, supra, is subordinate to the board. None of the other school district officials mentioned in your letter, with the exception of the superintendent, have any statutory power whatsoever to appoint employees. And the superintendent's power is limited to the appointment of the business manager in certain circumstances. Section 3319.03, Revised Code.

In specific answer to your question it is, therefore, my opinion, and you are so advised, that, under Section 143.08 (A) (8), Revised Code, only a principal appointive executive officer, board, or commission, authorized to appoint secretaries, assistants, clerks and stenographers, is entitled to the services of one unclassified stenographer and two other unclassified employees who may be either secretaries, assistants or clerks. In a school district only the board of education itself meets these requirements.