

October 22, 2014

The Honorable Trecia Kimes-Brown
Vinton County Prosecuting Attorney
100 East Main Street
McArthur, Ohio 45651

SYLLABUS:

2014-038

R.C. 124.57 does not prohibit an employee of a board of health of a general health district established pursuant to R.C. 3709.01 from being a candidate in a partisan election.



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OPINION NO. 2014-038

The Honorable Trecia Kimes-Brown
Vinton County Prosecuting Attorney
100 East Main Street
McArthur, Ohio 45651

Dear Prosecutor Kimes-Brown:

You have requested an opinion whether an employee of the Vinton County Health Department, a general health district, is prohibited by R.C. 124.57 from being a candidate in a partisan election. You also inquire about the effect of R.C. 3709.13 on the determination of whether an employee of a general health district is in the classified service of the state for purposes of R.C. 124.57.

General Health Districts

The territory of the state is organized into health districts. R.C. 3709.01. Each city forms a city health district and the villages and townships of a county join together to form a general health district. *Id.* R.C. 3709.01 authorizes city health districts or general health districts to join together to form one health district. *See generally* R.C. 3709.051 (a single city health district formed by the joining of two or more city health districts); R.C. 3709.07 (joining one or more city health districts with a general health district to form a combined general health district); R.C. 3709.10 (the joining of two or more general health districts into a single general health district).

The Vinton County Health Department was established in accordance with R.C. 3709.01 as a general health district that encompasses the villages and townships located within Vinton County. *See* Ohio Department of Health, *Ohio's Health Department Profile and Performance Database*, <https://odhgateway.odh.ohio.gov/LHDInformationSystem/Directory/GetLHDReport> (last visited Oct. 21, 2014). To our knowledge, the general health district in Vinton County is not a combination of one or more city health districts and a general health district under R.C. 3709.07, or a union of two or more general health districts under R.C. 3709.10. *See* Ohio Department of Health, *Ohio's Health Department Profile and Performance Database*, <https://odhgateway.odh.ohio.gov/LHDInformationSystem/Directory/GetLHDReport> (last visited Oct. 21, 2014). Consequently, this opinion focuses on general health districts established pursuant to R.C. 3709.01 that are not part of a union of two or more health districts.

Every general health district is served by a board of health, R.C. 3709.02(A), a district advisory council, R.C. 3709.03(A), and a health district licensing council, R.C. 3709.41(A). The board of health of a general health district is the governing body of the health district and is composed of five members. R.C. 3709.02; 2007 Op. Att’y Gen. No. 2007-036, at 2-366. The board of health of a general health district “may, upon the recommendation of the health commissioner, appoint ... a public health nurse and a clerk and such additional public health nurses, physicians, and other persons as are necessary for the proper conduct of its work.” R.C. 3709.13. A general health district board of health is authorized to “determine the duties and fix the salaries of its employees.” R.C. 3709.16. The powers and duties of a board of health of a general health district are varied and are enumerated in R.C. Chapters 3707 and 3709. 1995 Op. Att’y Gen. No. 95-030, at 2-150 (“[t]he board of health is vested with broad general authority to provide for the health needs of the district”).

Application of R.C. 124.57 to an Employee of a Board of Health of a General Health District

You wish to know whether an employee of a general health district is prohibited by R.C. 124.57 from being a candidate for public office in a partisan election. R.C. 124.57(A) provides:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting, any such assessment, contribution, or payment from any officer or employee in the classified service of the state, the several counties, cities, or city school districts of the state, or the civil service townships of the state; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state be an officer in any political organization or take part in politics other than to vote as the officer or employee pleases and to express freely political opinions.

R.C. 124.57(A) has been construed to prohibit partisan political activity by classified employees in the service of the state, a county, a city, a city school district, or a civil service township. 1983 Op. Att’y Gen. No. 83-095, at 2-365 and 2-367; *see* 2A Ohio Admin. Code 123:1-46-02(A)(2) (2013-2014 Supplement) (“[p]olitical activity’ and ‘politics’ refer to partisan activities, campaigns, and elections involving primaries, partisan ballots, or partisan candidates”). Thus, R.C. 124.57(A) prohibits officers and employees in the classified service of the state, a county, a city, a city school district, or a civil service township from engaging in partisan political activities. Being a candidate in a partisan election is a prohibited partisan political activity. *See* rule 123:1-46-02(C)(1) (being a candidate in a partisan election is a prohibited activity of an employee in the competitive classified civil service of the state).

To determine whether R.C. 124.57 applies to an employee of a board of health of a general health district, we must determine whether the employee is in the classified “service of” the “state,” a “county,” a “city,” a “city school district,” or a “civil service township,” as those terms are used in R.C. 124.57(A). In R.C. 124.01, the General Assembly has provided definitions that shall be applied when construing the provisions in R.C. Chapter 124. When determining which positions of employment are included in “the classified service of the state” for purposes of R.C. 124.57(A), the definition of “service of the state” provided in R.C. 124.01(K) controls. For purposes of R.C. Chapter 124, the term “service of the state” “includes all offices and positions of trust or employment with the government of the state.” R.C. 124.01(K). And, R.C. 124.01(K) further declares that, “[s]ervice of the state’ and ‘civil service of the state’ do not include offices and positions of trust or employment with ... general health districts[.]”

Other definitions provided in R.C. 124.01 reinforce the notion that employment with a general health district does not constitute being in the “service of the state.” In several of those definitions, the state and general health districts are listed and identified as separate legal entities. *See* R.C. 124.01(A) (for purposes of R.C. Chapter 124, “civil service” is defined as “all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, general health districts, and city school districts of the state”); R.C. 124.01(B) (“state service” is defined, for purposes of R.C. Chapter 124, as “all offices and positions in the service of the state and the counties and general health districts of the state”); R.C. 124.01(C) (for purposes of R.C. Chapter 124, “classified service” is defined as “the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships”). If, for purposes of R.C. 124.57, employment with a general health district constituted employment in the service of the state, it would not be necessary to include separate references to “the state” and “general health districts” among the definitions provided in R.C. 124.01(A) through (C).

Additionally, an essential characteristic of “service of the state,” as that term is used in R.C. Chapter 124, is employment by the state government. *See* R.C. 124.01(K) (“[s]ervice of the state’ ... includes all offices and positions of trust or employment with the government of the state”); *In re Appeal of Ford*, 3 Ohio App. 3d 416, 420, 446 N.E.2d 214 (Franklin County 1982) (“employment in the service of the state under R.C. 124.01 has two requisites: (1) employment by a state agency, and (2) compensation being paid in whole or in part from state funds ... regardless of the source of such state funds”). However, “for purposes of R.C. Chapter 124, a general health district is an employer separate from the state” and is not a state agency. 1980 Op. Att’y Gen. No. 80-087, at 2-341 and 2-343 (“[g]eneral health districts are political subdivisions of the state, not state agencies”).¹ Therefore,

¹ We acknowledge that several judicial opinions have described a city or general health district as a state agency. *See, e.g., Johnson’s Markets, Inc. v. New Carlisle Dep’t of Health*, 58 Ohio St. 3d 28, 33, 567 N.E.2d 1018 (1991); *Bd. of Health of St. Bernard v. City of St. Bernard*, 19 Ohio St. 2d 49, 53, 249 N.E.2d 888 (1969); *State ex rel. Mowrer v. Underwood*, 137 Ohio St. 1, 5, 27 N.E.2d 773

we conclude that a person holding a position of trust or employment with a general health district is not in the “service of the state” for purposes of R.C. 124.57.

A person who holds a position of trust or employment with a general health district is not in the service of a county, a city, a city school district, or a civil service township for purposes of R.C. 124.57. A general health district is “not part of any county, township, or municipal government.” 2010 Op. Att’y Gen. No. 2010-023, at 2-163; *accord* 2007 Op. Att’y Gen. No. 2007-036, at 2-366. “The health districts are political subdivisions of the state, governed by state law, and are separate from any city, county, township or other local government.” 1991 Op. Att’y Gen. No. 91-016, at 2-80; *accord* 2010 Op. Att’y Gen. No. 2010-023, at 2-163; 1995 Op. Att’y Gen. No. 95-030, at 2-149; 1994 Op. Att’y Gen. No. 94-096, at 2-475 (“a general health district is a political subdivision in its own right, separate and distinct from other political subdivisions that exist within its boundaries”); 1980 Op. Att’y Gen. No. 80-087, at 2-341 and 2-343.

Thus, an employee of a board of health of a general health district is in the service of the general health district and is not in the service of the state, a county, a city, a city school district, or a civil service township for purposes of R.C. 124.57. Insofar as an employee of a general health district is not in the service of any of the five entities identified in R.C. 124.57(A), the prohibitions of R.C. 124.57(A) do not apply to an employee of a general health district. *See, e.g.*, 2012 Op. Att’y Gen. No. 2012-017, at 2-144; 2001 Op. Att’y Gen. No. 2001-040, at 2-239; 1997 Op. Att’y Gen. No. 97-026, at 2-151.

You have also asked us to consider R.C. 3709.13’s effect on the determination of whether an employee of a general health district is in the service of the state when applying R.C. 124.57(A). R.C. 3709.13 provides, in pertinent part, that “[e]mployees of the board [of health of a general health

(1940). 1994 Op. Att’y Gen. No. 94-096, adopting the reasoning of 1975 Op. Att’y Gen. No. 75-036, explained:

[T]he term “state agency,” when read in the context of those particular authorities, was not intended to define the status of a health district as something other than a political subdivision; rather, the term was used simply to emphasize that health districts “derive their authority directly from the state” and are “a separate part of state government and not a branch of municipal or county government as they had been prior to the Hughes and Griswold Acts.” The analysis of Op. No. 75-036 remains pertinent to more recent cases that have used the term “state agency” to describe health districts.

1994 Op. Att’y Gen. No. 94-096, at 2-476 n.1 (citations omitted) (quoting 1975 Op. Att’y Gen. No. 75-036, at 2-142). We adopt the reasoning of 1975 Op. Att’y Gen. No. 75-036 and 1994 Op. Att’y Gen. No. 94-096 and conclude that a general health district is not a state agency for purposes of R.C. Chapter 124.

district], other than the commissioner, shall be in the classified service of the state[.]” On the other hand, R.C. 124.01(K) excludes employment with a general health district from the “service of the state” for purposes of R.C. Chapter 124. It appears that the language of R.C. 3709.13 and R.C. 124.01(K) conflict.

When faced with two conflicting statutory provisions our initial endeavor is to construe the provisions so as to give effect to both. R.C. 1.51 (“[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both”). For the reasons that follow, we conclude that R.C. 124.01(K) and R.C. 3709.13 may be construed so as to give effect to both provisions.

R.C. 124.01 states, in pertinent part, that “[e]xcept as otherwise provided in [R.C. Chapter 124], as used in [R.C. Chapter 124],” the terms thereafter enumerated have the meanings prescribed in R.C. 124.01(A) through (K). Among the eleven terms the General Assembly has so defined, in R.C. 124.01(K), are “service of the state” and “civil service of the state.” Therefore, when determining which positions of employment are included in “the classified service of the state” for purposes of R.C. 124.57(A), we are to apply the definition of “service of the state” provided in R.C. 124.01(K). In light of the language of R.C. 124.01 providing that the identified terms have the specific meanings set forth in R.C. 124.01 when those terms are used in R.C. Chapter 124, R.C. 3709.13 may not be relied upon as a statute that provides the meaning of terms in R.C. 124.57. In addition, 1980 Op. Att’y Gen. No. 80-087, at 2-341, explained:

[F]or purposes of R.C. Chapter 124, a general health district is an employer separate from the state and its other political subdivisions.

The provision in R.C. 3709.13 stating that general health district employees are in “the classified service of the state” merely places such employees within the general civil service framework of R.C. Chapter 124, but does not make them employees of the state. The more specific provisions of R.C. Chapter 124 govern the precise nature of the public employment of general health district employees.

The opinion continued by reiterating that in stating that general health district employees “shall be in the classified service of the state” in R.C. 3709.13 “the legislature merely intended to indicate that general health district employees are within the civil service scheme of R.C. Chapter 124.” 1980 Op. Att’y Gen. No. 80-087, at 2-343.² In so far as a general health district is an employer separate from

² By placing employees of a general health district within the state civil service system, certain provisions of R.C. Chapter 124 are applicable to general health district employees, while other provisions are not, depending upon the terms of the specific statute. *See, e.g.*, 2008 Op. Att’y Gen. No. 2008-017, at 2-188 and 2-192 to 2-193 (R.C. 124.38, addressing sick leave benefits, is not applicable to employees of a general health district, but R.C. 124.34(A), governing the tenure of certain classified employees, applies to employees of a general health district).

the state, employees of a general health district are not employed by the state government and are not in the service of the state.

The explanation provided by 1980 Op. Att’y Gen. No. 80-087 is consistent with the legislative history of R.C. 3709.13. The language in R.C. 3709.13 providing that employees of a general health district are in the classified service of the state was added in 1967. 1967-1968 Ohio Laws, Part I, 1219 (Am. Sub. S.B. 271, effective Dec. 13, 1967). A stated purpose of Am. Sub. S.B. 271 was “to place general health district employees under the state civil service system.” 1967-1968 Ohio Laws, Part II-III, 2255 (Am. Sub. S.B. 271, effective Dec. 13, 1967). The definition of “service of the state” that now appears in R.C. 124.01(K) presents additional confirmation that the interpretation of R.C. 3709.13 that was applied in 1980 Op. Att’y Gen. No. 80-087 is consistent with the intent of the General Assembly. Therefore, following the reasoning of 1980 Op. Att’y Gen. No. 80-087, we give effect to both provisions by concluding that R.C. 3709.13 subjects general health districts to applicable provisions of the civil service laws of R.C. Chapter 124, while R.C. 124.01(K) clarifies that employees of a board of health of a general health district are not employees of the state, for purposes of R.C. Chapter 124, and are not in the “service of the state” as that term is used in R.C. Chapter 124, including its use in R.C. 124.57.

Even if the conflict between R.C. 124.01(K) and R.C. 3709.13 was irreconcilable, application of the guidance set forth in R.C. 1.51 would lead us to conclude that R.C. 124.01(K) prevails over R.C. 3709.13. *See* R.C. 1.51 (“[i]f the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail”). R.C. 124.01(K) is a general provision, applicable to all public positions, that sets forth the definition of “service of the state” for purposes of the civil service statutes. R.C. 3709.13, on the other hand, is a special provision that governs solely employees of a board of health of a general health district. Division (K) of R.C. 124.01 was enacted in 2007. 2005-2006 Ohio Laws, Part V, 8880, 8884-8885 (Sub. H.B. 187, effective March 30, 2007, with certain sections effective July 1, 2007). R.C. 3709.13 was last amended in 1967 to add the language classifying employees of a general health district as employees in the classified service of the state. Am. Sub. S.B. 271. R.C. 124.01(K), therefore, is the later adopted provision.

In construing the meaning of a statute, it is reasonable to presume the General Assembly had knowledge of previously enacted statutes. *See State v. Conyers*, 87 Ohio St. 3d 246, 250, 719 N.E.2d 535 (1999). In accordance with that rule of construction, we presume that the General Assembly was aware of R.C. 3709.13 when R.C. 124.01 was amended to add division (K). R.C. 124.01 states that the definitions provided therein apply when the defined terms are used in R.C. Chapter 124, unless R.C. Chapter 124 provides otherwise. We must, therefore, conclude that the manifest intent of the General Assembly was for R.C. 124.01(K) to prevail over R.C. 3709.13 when applying the provisions of R.C. Chapter 124.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that R.C. 124.57 does not prohibit an employee of a board of health of a general health district established pursuant to R.C. 3709.01 from being a candidate in a partisan election.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL DEWINE
Ohio Attorney General