

OPINION NO. 67-104**Syllabus:**

1. Employees of a Community Mental Health and Retardation Board or employees of facilities operated by them are both "public employees" within the meaning of Chapter 145, Revised Code, and form part of the "state service" as defined in Chapter 143, Revised Code.
2. Non-administrative positions authorized by Section 340.04, Revised Code, (employees of the Community Mental Health and Retardation Board) are classified employees within the provisions of Section 143.08 (B), Revised Code.

To: Wayne Ward, Director, Department of Personnel, Columbus, Ohio
By: William B. Saxbe, Attorney General, November 9, 1967

I have before me your request which asks:

"1. Are employees of a Community Mental Health and Retardation Board, or employees of facilities operated by such a board, public employees within the meaning of Chapter 145 Revised Code ?

"2. If they are public employees, are

they part of the state service as defined by Chapter 143?

"3. If they are state employees, are they in the classified civil service?"

Section 145.01 (A), defines "public employees" as:

"'Public employee' means any person holding an office, not elective, under the state or any county, * * * or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division, or employed and paid in whole or in part by the state or any of the authorities named in this division, * * *

" * * * * * " (Emphasis added)

Section (D) of said section defines "employer" as:

"'Employer' means the state or any county, * * * board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division * * *

" * * * * * " (Emphasis added)

Section 143.01, Revised Code, provides:

"(A) 'Civil service' includes all offices and positions of trust or employment in the service of the state and the counties, * * *

"(B) 'State service' includes all such offices and positions in the service of the state, or the counties thereof, * * *

" * * * * * "

The relationship between employees of a community mental health and retardation board to state service as well as public employment can be appreciated more fully by reviewing the composition of the board and the authority to hire employees necessary for the board's work. The board members are appointed jointly. One-third of the membership is appointed by the Commissioner of Mental Hygiene with the approval of the Director of Mental Hygiene and Correction and two-thirds, by the board of county commissioners (Section 340.02, Revised Code). The board appoints an executive director [Section 340.03 (F)] who in turn "shall;

" * * * * * "

"(E) Employ and remove from office such employees and consultants as may be necessary for the work of the board, * * *" (Section 340.04, Revised Code).

* * * * *"

Deriving both from the county and a state executive department, the authority to employ workers for the board conforms to the definition of "Employer" of Section 145.01 (D), supra. Furthermore, employees provided for in Section 340.04 (E), Revised Code, fill positions "in the service of the state" as well as "counties thereof" [Section 143.01 (B), Revised Code] as evidenced by the foregoing.

Therefore, the employees of a community mental health and retardation board as authorized by Section 340.04 (E), Revised Code, comply with the qualifications of "public employees" within "state service."

Your last question concerns the classification of said employees as specified by Section 143.08, Revised Code. Subsection (A) of that section expressly designates those categories of unclassified civil service. I can find no provision within Section 143.08 (A), supra, which includes such non-administrative positions as the general assembly authorized a community mental health and retardation board to employ [Section 340.04 (E)]. Those persons so employed should be designated as classified civil service personnel under the provisions of Section 143.08, subsection (B):

"The classified service shall comprise all persons in the employ of the state and of the several counties, * * * not specifically included in the unclassified service, * * *"

Therefore, it is my opinion and you are hereby advised that:

1. Employees of a Community Mental Health and Retardation Board or employees of facilities operated by them are both "public employees" within the meaning of Chapter 145, Revised Code, and form part of the "State service" as defined in Chapter 143, Revised Code.

2. Non-administrative positions authorized by Section 340.04, Revised Code, (Employees of the Community Mental Health and Retardation Board) are classified employees within the provisions of Section 143.08 (B), Revised Code.