

OPINION NO. 78-022**Syllabus:**

R.C. 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to R.C. 503.24, or from seeking that office in a non-partisan election. (1974 Op. Att'y Gen. No. 74-034, approved and followed. 1962 Op. Att'y Gen. No. 2879, p. 213; 1961 Op. Att'y Gen. No. 2310, p. 334; 1960 Op. Att'y Gen. No. 1663 [first branch of the syllabus], p. 597; 1959 Op. Att'y Gen. No. 223 [second branch of the syllabus], p. 110; 1957 Op. Att'y Gen. No. 844, p. 344; and 1951 Op. Att'y Gen. No. 1014, p. 854, overruled.)

To: David Frey, Athens County Pros. Atty., Athens, Ohio
By: William J. Brown, Attorney General, April 18, 1978

I have before me your request for my opinion which raises the following question:

Would it be proper for the Board of Township Trustees to appoint an employee of the Department of Mental Health and Mental Retardation to a vacant seat on the Board of Township Trustees?

As you indicate in your request, R.C. 124.57 prohibits classified civil servants from engaging in politics. Although you do not indicate whether the particular employee in question is classified, I will assume for purposes of this opinion that he is classified.

R.C. 124.57 provides that:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, 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 and the several counties, cities, or city school districts thereof, or civil service townships; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, and civil service townships, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions. (Emphasis added.)

This section has been the source of numerous opinions from this office, the most recent being 1974 Op. Att'y Gen. No. 74-034. That opinion concluded:

A person in classified civil service is not prohibited from being a candidate for or holding the office of member of a county board of education by R.C. 124.57, because that Section only prohibits partisan political activity.

The opinion specifically overruled several previous opinions of my predecessors and was based upon two cases which had narrowly construed the phrase "take part in politics." Those two cases, Heidtman v. Shaker Heights, 163 Ohio St. 109 (1955), and Gray v. Toledo, 323 F. Supp. 1281 (N.D. Ohio, 1971), are carefully analyzed in Opinion No. 74-034, *supra*, and I see no need to analyze them again here. In summary, they hold that R.C. 124.57 prohibits a classified civil servant from engaging in partisan politics. It does not prohibit non-partisan political activity and specifically protects freedom of expression and the right to vote.

It was my conclusion in Opinion No. 74-034 that the office of a county school board member was not a partisan office in the sense prohibited by R.C. 124.57. Your opinion request can therefore be reduced to one simple issue: Does appointment to a board of township trustees entail involvement in partisan politics? The answer to that question requires further analysis.

A vacancy on the Board of Township Trustees is filled pursuant to R.C. 503.24. That section provides, in part, as follows:

If, by reason of the nonacceptance, death, or removal of a person chosen to an office in any township at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term.

While it appears that this type of appointive process could involve partisan politics, it should be pointed out that elections for township offices are normally made without primaries, R.C. 3513.253, and on non-partisan ballots, R.C. 3505.04. In that respect, they are identical to elections for school board members. See, R.C. 3513.254 and 3505.04. Under the reasoning of Opinion No. 74-034, it would therefore be permissible for a classified civil servant to run for township trustee, as it is a non-partisan election. Since such an employee could run for the office of trustee, it would be anomalous to conclude that he could not be appointed to fill a vacancy on the board of trustees. Thus, the appointment is permissible.

One caveat is necessary. The rationale supporting Opinion No. 74-034 is that school board members are elected in a non-partisan election, on non-partisan ballots, and without primary elections. Normally, township elections are held in a similar fashion. However R.C. 3513.253 requires that a primary election be held upon petition of a majority of the electors in the township. Where such a primary is held the ensuing general election becomes partisan, with partisan ballots in use and it would be inappropriate for a classified civil servant to seek office in such an election.

Accordingly, it is my opinion, and you are so advised that:

R.C. 124.57 does not prohibit a classified civil servant from being appointed to the office of township trustee pursuant to R.C. 503.24, or from seeking that office in a non-partisan election. (1974 Op. Att'y Gen. No. 74-034, approved and followed. 1962 Op. Att'y Gen. No. 2879, p. 213; 1961 Op. Att'y Gen. No. 2310, p. 334; 1960 Op. Att'y Gen. No. 1663 [first branch of the syllabus], p. 597; 1959

Op. Att'y Gen. No. 223 [second branch of the syllabus], p. 110; 1957 Op. Att'y Gen. No. 884, p. 344; and 1951 Op. Att'y Gen. No. 1014, p. 854, overruled.