

OPINION NO. 78-044**Syllabus:**

The Director of Administrative Services has the authority, pursuant to R.C. 124.07, to appoint persons not in the employ of the department, including officers or employees of other state agencies or county government, to administer civil service examinations under his direction. (1965 Op. Att'y Gen. No. 65-108 modified).

To: Richard D. Jackson, Dept. of Administrative Services, Columbus, Ohio
By: William J. Brown, Attorney General, June 27, 1978

I have before me your request for my opinion concerning the authority of the Director of Administrative Services to delegate to officers or employees of other state agencies or county government the responsibility for administering civil service examinations prepared by the Department of Administrative Services. You state that in performing the test administration, the officers or employees of these other agencies shall use their own facilities. All other functions relating to the testing process, such as grading the examinations and preparing eligible lists, shall continue to be exclusively performed by employees of the Department of Administrative Services.

The duty of the Director of Administrative Services to conduct civil

examinations is set forth in R.C. 124.04, which provides in pertinent part as follows:

The powers, duties and functions of the department of administrative services not specifically vested in and assigned to, or to be performed by, the state personnel board of review are hereby vested in and assigned to, and shall be performed by the director of administrative services, which powers, duties and functions shall include, but shall not be limited to the following powers, duties and functions:

- (A) To prepare, conduct, and grade all competitive examinations for positions in the classified state service;
- (B) To prepare, conduct and grade all non-competitive examinations for positions in the classified state service;
- (C) To prepare eligible lists containing the names of persons qualified for appointment to positions in the classified state service;

. . . .

- (J) To appoint such examiners, inspectors, clerks and other assistants as are necessary in the exercise of the powers and performance of the duties and functions which the director is by law authorized and required to exercise and perform and to prescribe the duties of all such employees. (Emphasis added).

The authority of the Director of Administrative Services to delegate his responsibility to conduct civil service examinations to persons not in the employ of the department was considered by one of my predecessors in 1965 Op. Att'y Gen. No. 65-108. The syllabus of the opinion states that the director may delegate this responsibility only to those employees who are directly responsible to him. The basis for this conclusion is the following interpretation of R.C. 143.013, now R.C. 124.04, set forth in the opinion at 2-231:

It is clear from [R.C. 143.013] that the legislature has designated the Director of State Personnel as the public official responsible for [the conduct of civil service examinations]. It is equally clear that he must have control over the examination process from beginning to end. In Section 143.013(J), Revised Code the legislature made provision for delegating some of the Director's authority to examiners, etc., as may be necessary. But the Director of State Personnel must retain control of the examination process as administered by the examiners and the examiners must be responsible to the Director. This is reflected by the fact that the legislature has given the Director the power to delegate authority only to his employees.

While I concur with my predecessor's analysis of R.C. 143.013 I cannot accept it as dispositive of the issue. R.C. 124.07, set forth in pertinent part below, also empowers the Director of Administrative Services to appoint examiners and other assistants.

The director of administrative services shall appoint such examiners, inspectors, clerks and other assistants as are necessary to carry out sections 124.01 to 124.64 of

the Revised Code. The director may designate persons in or out of the official service of the state to serve as examiners or assistants under his direction who shall receive such compensation for each day actually and necessarily spent in the discharge of their duties as examiner or assistant as is determined by the director; provided if any such examiner or assistant is in the official service of the state, or any political subdivision thereof, it shall be a part of his official duties to render such services in connection with the examination without extra compensation. (Emphasis added).

This statute expressly authorizes the director to appoint persons not in the employ of the department as examiners and also permits the director to compensate such individuals if they are not in the official service of the state. The only qualification contained in the statute is that the appointees serve under the direction of the Director of Administrative Services.

It is, therefore, my opinion and you are so advised that the Director of Administrative Services has the authority, pursuant to R.C. 124.07, to appoint persons not in the employ of the department, including officers or employees of other state agencies or county government, to administer civil service examinations under his direction. (1965 Op. Att'y Gen. No. 65-108 modified).