

OPINION NO. 92-062**Syllabus:**

1. R.C. 181.21(C) empowers the State Criminal Sentencing Commission, with the advice of the Director of the Office of Criminal Justice Services, to appoint and fix the compensation of a project director and any other employees necessary to assist the Commission in the execution of its authority under R.C. 181.21-.25.
2. The State Criminal Sentencing Commission is an "[a]ppointing authority," as defined in R.C. 124.01(D).
3. Employees of the State Criminal Sentencing Commission are subject to layoff from their positions at the direction of the Commission in accordance with the provisions of R.C. 124.321-.327 and the rules promulgated by the Director of Administrative Services at 1 Ohio Admin. Code Chapter 123:1-41.
4. Neither the Department of Development and its Director nor the Office of Criminal Justice Services and its Director are empowered to appoint and fix the compensation of a project director and any other employees necessary to assist the State Criminal Sentencing Commission in the execution of its authority under R.C. 181.21-.25.

5. Employees of the Department of Development who are laid off from their positions at the Department are not entitled to displace employees of the State Criminal Sentencing Commission from their positions at the Commission.

**To: David Diroll, Executive Director, State Criminal Sentencing Commission,
Columbus, Ohio**

By: Lee Fisher, Attorney General, December 29, 1992

You have requested an opinion addressing the power of the State Criminal Sentencing Commission to oversee and implement workforce reductions undertaken pursuant to R.C. 124.321-.327. Specifically, you ask whether the State Criminal Sentencing Commission, as created by R.C. 181.21, is the "appointing authority" of Commission employees for purposes of employee layoffs under R.C. 124.321(A). R.C. 124.321(A) provides that, "[w]henver it becomes necessary for an appointing authority to reduce its work force the appointing authority shall lay off employees or abolish their positions in accordance with [R.C. 124.321-.327] and the rules of the director of administrative services." *See also* R.C. 124.321(B)-(D) (specifying the reasons for which an appointing authority may lay off employees); R.C. 124.321(E) (requiring the Director of Administrative Services to promulgate rules under R.C. Chapter 119 "for the determination of lack of work within an appointing authority, for the abolishment of positions by an appointing authority, and for the implementation of [R.C. 124.321]").¹

Your letter describes a difference of opinion between the State Criminal Sentencing Commission and the Department of Development with respect to this question. The Department asserts that it is the appointing authority for Commission employees because the Commission has been created within the Office of Criminal Justice Services, *see* R.C. 181.21(A) ("[t]here is hereby created within the office of criminal justice services the state criminal sentencing commission, consisting of seventeen members"), which, in turn, has been created within the Department of Development, *see* R.C. 122.22(A) ("[t]here is hereby created, in the department of development, an office of criminal justice services"). The Department also notes that it processes much of the Commission's administrative paperwork, including that pertaining to payroll and the purchasing of products and services by the Commission. Conversely, the Commission relies upon certain language in its enabling statute to support its assertion that the Commission is, exclusively, the "appointing authority" of Commission employees for purposes of R.C. 124.321(A), *see* R.C. 181.21(C) (the State Criminal Sentencing Commission "shall appoint and fix the compensation of a project director and any other employees necessary to assist [it]" and also "may appoint and fix the compensation of part-time data collectors, clerical employees, and other temporary employees as needed").

Displacement Rights of Laid-Off Employees Generally

A significant issue implicit in your question is whether classified employees within the Department of Development who are laid off from their positions are entitled, pursuant to R.C. 124.324, to displace classified State Criminal Sentencing Commission employees from their positions at the Commission. R.C. 124.324(A) states, in pertinent part, that, "[a] laid-off employee has the right to displace the

¹ The rules promulgated by the Director of Administrative Services pursuant to R.C. 124.321(A) and (E) (and similar directives in R.C. 124.322, R.C. 124.324, and R.C. 124.325) appear in 1 Ohio Admin. Code Chapter 123:1-41.

employee with the fewest retention points in the classification from which the employee was laid off or in a lower or equivalent classification," in the order specified. See 1 Ohio Admin. Code 123:1-41-11(A) ("General. Each employee laid off, or displaced as a result of a layoff, shall have the right to displace another employee with the fewest retention points in the manner provided in this rule"). See also R.C. 124.322 (layoffs by classification); R.C. 124.323 (order of classification); R.C. 124.325 (retention points for continuous service); R.C. 124.326 (layoff jurisdictions); R.C. 124.327 (layoff lists; reinstatement and reemployment rights); 1 Ohio Admin. Code 123:1-41-06 (layoff classifications determined by appointing authority); 123:1-41-07 (order of layoff of employees); 123:1-41-08, -09 (verification and computation of retention points); 123:1-41-13 (layoff jurisdiction districts for state agencies, boards, commissions, and independent institutions). R.C. 124.324(B) qualifies exercise of the displacement right conferred by R.C. 124.324(A) by providing that, "[f]ollowing the order of layoff, an employee laid off in the classified civil service shall displace another employee *within the same appointing authority* or independent institution and layoff jurisdiction." (Emphasis added.) See 1 Ohio Admin. Code 123:1-41-11(A) ("[d]isplacement rights of an employee may only be exercised within the employee's appointing authority and within the layoff jurisdiction as established in [Chapter 123:1-41]"). Regarding the language of R.C. 124.324(B) just quoted, syllabus paragraph one of *State ex rel. Blinn v. Department of Administrative Services*, 21 Ohio App. 3d 117, 487 N.E.2d 343 (Franklin County 1984) declares as follows:

The "bumping" rights provided by R.C. 124.324(B) to an employee laid off in the classified civil service is limited to the laid-off employee's appointing authority and cannot be exercised elsewhere in the layoff district, *i.e.*, the employee has no right to displace or "bump" employees of different appointing authorities.

Accordingly, employees whose appointing authority is the Department of Development and who are laid off from their positions are entitled, pursuant to R.C. 124.324(A), to displace employees of the State Criminal Sentencing Commission only if the Department is also the appointing authority of those Commission employees. However, if the appointing authority for Commission employees is an entity other than the Department of Development, no such displacement may occur. R.C. 124.324(B); *State ex rel. Blinn v. Department of Administrative Services*.

The State Criminal Sentencing Commission is the "Appointing Authority" of Commission Employees, as that Term is Defined in R.C. 124.01(D)

The answer to your question is provided by R.C. 124.01(D) and R.C. 181.21(C). R.C. 124.01 defines a variety of terms as used within R.C. Chapter 124. As pertains here, R.C. 124.01(D) defines "[a]ppointing authority" as the "officer, *commission*, board, or body having the power of appointment to, or removal from, positions in any office, department, *commission*, board, or institution." (Emphasis added.) See also R.C. 124.01(F) (as used in R.C. Chapter 124, "[e]mployee" means "any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer"). Thus, as used in R.C. 124.321 and R.C. 124.324, the term "appointing authority" includes a commission that has the power of appointment to, or removal from, positions in the commission.

R.C. 181.21-.25 govern the organization and operation of the State Criminal Sentencing Commission. As noted previously, R.C. 181.21(A) has created the Commission within the Office of Criminal Justice Services, and further describes the appointment of those individuals who are to serve as members of the Commission and their terms of office. R.C. 181.21(B) addresses certain procedures for meetings of the Commission, the election of Commission officers, and the reimbursement of the actual and necessary expenses incurred by Commission members in the

performance of their duties. R.C. 181.21(C) authorizes the appointment and compensation of a project director for the Commission, and the appointment and compensation of other Commission employees. R.C. 181.21(C) reads as follows:

The commission shall establish an office. With the advice of the director of the office of criminal justice services, *the commission shall appoint and fix the compensation of a project director and any other employees necessary to assist the commission in the execution of its authority* under sections 181.21 to 181.25 of the Revised Code. The project director shall have a thorough understanding of the criminal laws of this state and experience in committee-oriented research. The other employees may include a research coordinator with experience and training in policy-oriented research; professional staff employees with backgrounds in criminal law, criminal justice, political science, or related fields of expertise; administrative assistants; and secretaries. *The commission, with the advice of the director of the office of criminal justice services, also may appoint and fix the compensation of part-time data collectors, clerical employees, and other temporary employees as needed to enable the commission to execute its authority* under sections 181.21 to 181.25 of the Revised Code.

The project director shall be a member of the unclassified service as defined in section 124.11 of the Revised Code. The other employees shall be members of the classified service, as defined in that section. (Emphasis added.)

The express language of R.C. 181.21(C) thus confers upon the State Criminal Sentencing Commission the power to appoint and compensate a project director and those employees that the Commission considers necessary to assist the Commission in the execution of its authority. Thus, it follows that, for purposes of R.C. 124.321(A), the Commission is the "[a]ppointing authority" of Commission employees, as that term is defined in R.C. 124.01(D).

It is true that the express language of R.C. 181.21(C) provides that the Commission's appointing power shall be exercised "[w]ith the advice of the director of the office of criminal justice services." The foregoing language, however, cannot be reasonably construed as vesting any appointing power in either the Director of the Office of Criminal Justice Services, or the Department of Development, of which the Office of Criminal Justice Services is a part. Rather, R.C. 181.21(C) limits the role of the Director of the Office of Criminal Justice Services to that of furnishing advice to the Commission in the exercise of its appointing power.²

Similarly, R.C. 122.22, which creates the Office of Criminal Justice Services within the Department of Development, does not confer upon the Director of Development any power of appointment with respect to employees of the State Criminal Sentencing Commission. In particular, R.C. 122.22(A) grants the Director of Development the power to employ the Director of the Office of Criminal Justice Services, and "any professional and technical personnel and other employees that are necessary to enable the office to comply with [R.C. 122.21-.27]." R.C. 122.22 makes no statement, however, regarding the employment of personnel for the Commission. It is reasonable to conclude, therefore, that the Director of Development does not

² Moreover, R.C. 181.21(C) imposes no requirement upon the State Criminal Sentencing Commission to act in accordance with such advice as may be furnished it by the Director of the Office of Criminal Justice Services.

possess or exercise any appointing power in the case of State Criminal Sentencing Commission employees.

Because the State Criminal Sentencing Commission is the "[a]ppointing authority" of Commission employees, those employees are subject to layoff from their positions at the direction of the Commission in accordance with the provisions of R.C. 124.321-.327 and the rules promulgated by the Director of Administrative Services at 1 Ohio Admin. Code Chapter 123:1-41. Neither the Department of Development and its Director nor the Office of Criminal Justice Services and its Director are "[a]ppointing authorities" of Commission employees, and thus may not direct or order the lay off of those employees from their positions at the Commission. In turn, employees of the Department of Development who are laid off from their positions at the Department are not entitled to displace employees of the State Criminal Sentencing Commission from their positions at the Commission. R.C. 124.324(B); *State ex rel. Blinn v. Department of Administrative Services*.

Conclusion

It is, therefore, my opinion, and you are advised that:

1. R.C. 181.21(C) empowers the State Criminal Sentencing Commission, with the advice of the Director of the Office of Criminal Justice Services, to appoint and fix the compensation of a project director and any other employees necessary to assist the Commission in the execution of its authority under R.C. 181.21-.25.
2. The State Criminal Sentencing Commission is an "[a]ppointing authority," as defined in R.C. 124.01(D).
3. Employees of the State Criminal Sentencing Commission are subject to layoff from their positions at the direction of the Commission in accordance with the provisions of R.C. 124.321-.327 and the rules promulgated by the Director of Administrative Services at 1 Ohio Admin. Code Chapter 123:1-41.
4. Neither the Department of Development and its Director nor the Office of Criminal Justice Services and its Director are empowered to appoint and fix the compensation of a project director and any other employees necessary to assist the State Criminal Sentencing Commission in the execution of its authority under R.C. 181.21-.25.
5. Employees of the Department of Development who are laid off from their positions at the Department are not entitled to displace employees of the State Criminal Sentencing Commission from their positions at the Commission.