

## OPINION NO. 74-091

## Syllabus:

1. The administrator or executive secretary of a county board of mental retardation, appointed pursuant to R.C. 5126.04, is the proper authority to remove, suspend, or reduce in position an employee of the board if done in accordance with regulations adopted by the board.

2. The administrator or executive secretary of the county board of mental retardation may take appropriate personnel action such as the termination, reduction in position, or suspension of an employee without the prior approval of the board if such personnel actions are done in accordance with the regulations of the board and are subsequently ratified by the board.

3. A county board of mental retardation may empower the administrator or executive secretary to take personnel actions which are effective immediately, subject to the review of the board.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio  
By: William J. Brown, Attorney General, October 28, 1974

I have before me your request for my opinion which reads as follows:

"1. Is the administrator or executive secretary of a county board of mental retardation, appointed pursuant to Section 5126.04, Revised Code, who is charged with the responsibility of administering the work of the board, the proper authority to remove, suspend or reduce in position an employee of the board if done in accordance with regulations adopted by the board?

"2. In light of the fact that the Board of Mental Retardation is composed of seven appointed citizens and is required by law to meet only four times per year, may the administrator or executive secretary of the board take appropriate personnel action such as the termination, reduction in position or suspension of an employee without the prior approval of the board if such personnel actions are done in accordance with the regulations of the board and are subsequently ratified by the board?

"3. Are any personnel actions taken by a duly appointed administrator or executive secretary of a board of mental retardation in accordance with the regulations of the board effective as of the date of the filing of the appropriate forms by the Director in accordance with Section 143.27, Revised Code, or upon the date the personnel action is subsequently ratified by the board?

R.C. 5126.04 reads as follows:

"The county board of mental retardation shall appoint an administrator or executive secretary who shall administer the work of the board of mental retardation, subject to the regulations of such board.

"With the approval of the board, such administrator or executive secretary shall appoint all other employees necessary to fulfill the duties invested in such board."

The third syllabus of Opinion No. 70-121, Opinions of the Attorney General for 1970, provides as follows:

"The administrator or executive secretary of a county board of mental retardation is the proper authority to employ all personnel deemed necessary by the board, pursuant to Section 5126.04, Revised Code, and providing services authorized under Section 5127.01, Revised Code."

Thus, it is clear that the administrator is in part (along with the board itself) an authority to appoint new employees. Logic would demand that if such official has the power to appoint employees, then inherent in that power is the authority to remove, suspend, or reduce in position the appointed employee. Indeed, the Revised Code itself in Section 124.01(D), which was formerly Section 143.01(D), links the power to appoint with the power to remove in the definition of an "appointing authority." R.C. 124.01(D) states:

"(D) Appointing authority signifies the officer, commission, board, or body having the

power of appointment to, or removal from, positions in any office, department, commission, board, or institution."

The logical connection between appointment and removal power is again evidenced in R.C. 124.01(F), which was formerly R.C. 143.01(F), where "employee" is defined as follows:

"(F) Employee signifies any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer."

Further support for my opinion that the administrator is the proper authority to remove, suspend, or reduce in position an employee of the board can be found in Opinion No. 72-011, Opinions of the Attorney General for 1972, where I expressed the opinion "that the potential authority of the position of administrator under the above quoted statutes [R.C. 5126.03 and R.C. 5126.04] is such that the administrator is inherently a check upon the other employees of the board." Thus, acting as a check, it would certainly appear that the administrator would be the proper authority to remove, suspend, or reduce in position any employee if done in accordance with regulations adopted by the board.

Your next inquiry concerns whether the administrator can take appropriate personnel action such as the termination, suspension, or reduction in position of an employee without prior approval of the board if such personnel actions are done in accordance with the regulations of the board and are subsequently ratified by the board. Looking at R.C. 5126.04, it can be seen that only the words "with the approval of the board" are used. No mention is made whether the prior approval of the board is required when appointment or removal by the administrator becomes necessary. If the legislature had intended that prior approval was necessary for such personnel actions taken by the administrator, it would have certainly so stated. It must be presumed that whether the order of approval by the board was prior, or subsequent, to the action of the administrator was of no importance to the legislature. All that is required is that the actions be approved. Thus, the administrator can take all required personnel actions without the prior approval of the board. Of course, all such actions must still be acted upon by the board.

The legislative intent must be derived from the statute. Slingluff v. Weaver, 66 Ohio St. 621 (1902); Seely v. Expert, Inc., 26 Ohio St. 2d 61 (1971). It is clear that the intent of R.C. 5126.04 was to give the administrator the power to take care of the day-to-day business of the board and to allow the administrator to control personnel matters, while retaining the primary or ultimate power of approval concerning personnel matters within the board itself. The administrator was not intended to be merely a ministerial position, where authority for every action must have been previously approved.

However, your third inquiry raises an entirely different question. That is whether the personnel action taken by the administrator becomes effective at the date of the filing of

the appropriate forms in accordance with R.C. 124.34 or when the action is subsequently ratified. (It should be noted that R.C. 143.27 has been amended and renumbered R.C. 124.34. Senate Bill 174, effective December 4, 1973.) R.C. 5126.04 states that, "[w]ith approval of the board, such administrator or executive secretary shall appoint all other employees necessary to fulfill the duties invested in such board." This language apparently authorizes the board to empower the administrator to take personnel actions, subject to the review of the board. Such actions would be effective immediately, although the board would retain power to overrule them. The administrator could then employ and discharge persons as circumstances required, without waiting for a meeting of the board. Situations can easily be imagined in which this power would be essential to the efficient operation of the program. R.C. 1.47 provides that, "[i]n enacting a statute, it is presumed that: \* \* \* (D) A result feasible of execution is intended."

In specific answer to your questions it is my opinion, and you are so advised that:

1. The administrator or executive secretary of a county board of mental retardation, appointed pursuant to R.C. 5126.04, is the proper authority to remove, suspend, or reduce in position an employee of the board if done in accordance with regulations adopted by the board.

2. The administrator or executive secretary of the county board of mental retardation may take appropriate personnel action such as the termination, reduction in position, or suspension of an employee without the prior approval of the board if such personnel actions are done in accordance with the regulations of the board and are subsequently ratified by the board.

3. A county board of mental retardation may empower the administrator or executive secretary to take personnel actions which are effective immediately, subject to the review of the board.