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1. STATE DEPARTMENT, DIRECTOR OF—HAS AUTHORITY SUBJECT TO APPROVAL OF GOVERNOR, TO ESTABLISH A CENTRAL PERSONNEL WITHIN HIS DEPARTMENT TO SERVE NEEDS OF DEPARTMENT—SECTIONS 154-3, 154-8 G. C.
2. GOVERNOR HAS AUTHORITY, SECTION 154-21 G. C., TO PROVIDE BY EXECUTIVE ORDER FOR ESTABLISHMENT OF CENTRAL PERSONNEL OFFICES IN ALL DEPARTMENTS CREATED BY SECTION 154-3 G. C.

## SYLLABUS:

1. The director of a state department created by Section 154-3, General Code, has authority, subject to the approval of the Governor, under Section 154-8, General Code, to establish a central personnel within his department to serve the needs of his department.

2. The Governor has authority under Section 154-21, General Code, to provide by executive order for the establishment of central personnel offices in all departments created by Section 154-3, General Code.

Columbus, Ohio, November 22, 1950

Ohio Program Commission  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Ohio Program Commission, a study and planning agency created by statute, has set up a committee to study the Organization of the Executive Branch of State Government along the lines of a similar study made by the Hoover Commission in the Federal government.

“This Committee has undertaken, among other studies, a study of the personnel administration in the state and has created a ‘task force’ to conduct this study.

“At a meeting held on October 13, 1950, this task force requested the office of the Ohio Program Commission to ask the Attorney General for opinions on:

“1. Whether the state departments created by Section 154-3 of the General Code are in legal position to set up central personnel offices, provided department heads wish to set them up.

“2. Whether the Governor has legal authority to issue an executive order setting up central personnel offices in all departments created by Section 154-3 of the General Code and describing the duties of those offices.

“On behalf of the Committee on the Organization of the Executive Branch of the State Department I should appreciate it very much if you would oblige us with a reply to the above questions.”

The questions you present require primarily an examination of the executive power of the Governor in directing the organization and functioning of the several administrative departments of the state. The constitutional provision reposing the supreme executive authority of the state in the Governor's office is Section 5, Article III of the Ohio Constitution which reads as follows:

“The supreme executive power of this state shall be vested in the governor.”

The statutory provisions relating to the executive powers of the Governor generally are found in the Ohio Administrative Code, Sections 154-1, et seq., General Code. Section 154-1, General Code, reads as follows:

“In order that the governor may exercise the supreme executive power of the state vested in him by the constitution and adequately perform his constitutional duty to see that the laws are faithfully executed, the administrative functions of the state are organized as provided in this chapter.

“All powers vested in and duties imposed upon the lieutenant governor, the secretary of state, the auditor of state, the treasurer of state and the attorney general by the constitution and the laws shall continue except as otherwise provided by this chapter.”

The several administrative departments of the state are created by Section 154-3, General Code, and under the provisions of Section 154-4, General Code, the directors of such departments are appointed by, and serve at the pleasure of, the Governor.

We may conclude then that since the supreme executive power of the state is vested in the Governor and since the several directors of the administrative departments serve at his pleasure, the Governor possesses and may exercise in his discretion any and all of the statutory powers of the several directors.

Among those powers is that of creating new offices and of consolidating existing offices. In this respect, Section 154-8, General Code, reads in part as follows :

“With the approval of the governor, the director of each department shall have authority to consolidate any two or more of the offices created in his department by section 154-6 of the General Code, or to reduce the number of or create new divisions therein.”

Another statutory provision, pertinent to the problem at hand, is found in Section 154-21, General Code, which reads as follows :

“Under the direction of the governor, the directors of departments shall devise a practical and working basis for cooperation and coordination of work and for the elimination of duplication and overlapping functions. They shall, so far as practicable, cooperate with each other in the employment of services and the use of quarters and equipment. The director of any department may empower or require an employe of another department, subject to the consent of the superior officer of the employe, to perform any duty which he might require of his own subordinates.”

I am assuming that the prime purpose of the proposed action to set up a central personnel office to serve the needs of the several administrative departments, as described in your inquiry, is to afford a practical means for cooperation and coordination of work and to eliminate duplication and overlapping of functions. In such event, I conclude that under provisions of this section the several directors, under the direction of the Governor, are authorized and empowered to set up such central office to serve the needs of their departments. Moreover, since such action is required to be “under the direction of the Governor,” I conclude the Governor may “direct” the action by executive order. Indeed, the clear legislative intent, expressed in Section 154-21, General Code, is such that if, in the judgment of the Governor, the establishment of such central personnel offices would provide “a practical and working basis for cooperation and coordination of work and for the elimination of duplication and overlapping functions.” it is not only within his power to do so but is actually his statutory duty.

In passing it is appropriate to note that the final sentence of Section 154-21, General Code, clearly authorizes the several directors by agreement among themselves, and subject to the approval of the Governor, to set up such a central office within one of the departments, such central

office being designed to serve the needs of the other departments, since each director is authorized to place one or more of his own employes under the direction of another department head. Thus a director of a department might "detail" such of his employes as are engaged in personnel work to perform their work in a central personnel office under the direction of the director of another department.

As to the authority of a state department to set up a central personnel office within the department, it would appear that there is ample authority in Section 154-8, General Code, for such action. It will be noted that this section authorizes the establishment of divisions within a department and the distribution of departmental work among them. It provides authority, as noted hereinbefore, for the creation of new offices and for the consolidation of existing offices. And finally, it provides authority for the adoption of regulations for the "conduct of its employes, the performance of its business and the custody, use and preservation of the records, papers, books, documents and property pertaining thereto."

Accordingly, in specific answer to your inquiries, it is my opinion that:

1. The director of a state department created by Section 154-3, General Code, has authority subject to the approval of the Governor, under Section 154-8, General Code, to establish a central personnel within his department to serve the needs of his department.

2. The Governor has authority under Section 154-21, General Code, to provide by executive order for the establishment of central personnel offices in all departments created by Section 154-3, General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.