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SALARY TO BE PAID SECRETARY OF STATE BOARD OF COSMETOLOGY PERTAINS TO CIVIL SERVICE AND SAID BOARD MAY NOT SET THE SALARY FOR SUCH POSITION— §§4713.02, 143., R.C.

## SYLLABUS:

The salary to be paid for the position of secretary to the state board of cosmetology, created pursuant to Section 4713.02, Revised Code, is subject to the provisions of Chapter 143., Revised Code, pertaining to civil service; and the board may not set the salary for such position.

Columbus, Ohio, August 24, 1961

Hon. Joseph A. Florio  
Chairman, State Board of Cosmetology  
21 West Broad Street, Columbus 15, Ohio

Dear Sir:

I have your request for my opinion reading:

“Under Sec. 4713.02 R.C. provision is made for the hiring of a secretary to the Cosmetology Board. No reference is made in the above referred to section as to compensation.

“It is respectfully requested that you give this Board your opinion as to whether the Board sets the amount of compensation for the Secretary or whether the Department of Personnel should do so.

"It is also requested that you give us your opinion as to whether the present Secretary will be eligible to collect the difference in salary between that voted unanimously by the Board last September and that set by the Department of Personnel."

The pertinent part of Section 4713.02, Revised Code, under which the State Board of Cosmetology is created, provides :

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"The members of the board shall, annually, elect from among their number, a chairman, and shall, annually, appoint a secretary who shall not be a member of the board. The compensation of the secretary shall be paid upon the warrant of the auditor of state and charged against the board's rotary fund. The secretary, before entering upon the discharge of his duties, shall file with the treasurer of state a good and sufficient bond in the penal sum of five thousand dollars payable to the state, to insure the faithful performance of his duties. The premium of such bond shall be paid upon the warrant of the auditor of state and charged against the board's rotary fund.

"\* \* \*

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It is to be noted that the members of the board, annually appoint a secretary who shall not be a member of the board, and that the compensation of such secretary is charged against the board's rotary fund.

At one time the law specifically stated that the board should set the compensation of the secretary. In this regard, former Section 1082-3, General Code, before its amendment in 1949 (123 Ohio Laws, 862, at 917), read in part :

"The members of the board shall, annually, elect from among their number, a chairman, and shall, annually, appoint a secretary who shall not be a member of the board. The compensation of the secretary *shall be fixed by the board*, and shall be paid upon the warrant of the state auditor \* \* \*." (Emphasis added)

The 1949 amendment deleted the emphasized language, thus indicating that the board would no longer set the compensation of the secretary. The bill making the amendment was a bill "To provide for the standardization of positions, titles, classes, salaries and wages of employees in the state service \* \* \*," and the clear intent of the amendment in question was to put the compensation of the secretary under the state civil service law.

Further, on reading Sections 143.09 and 143.10, Revised Code, dealing with state civil service, it appears clear that the position in question is subject to the civil service laws.

The first paragraph of Section 143.09 (A), Revised Code, provides :

“(A) All positions, offices, and employments paid in whole or in part by this state or paid out of any rotary fund of any state department, or state institution, except those excluded in sections 143.09 and 143.10, of the Revised Code, are classified hereby and assigned hereby to the pay ranges established in section 143.10 of the Revised Code, as follows :

“\* \* \*

\* \* \*

\* \* \*”

After the above language, there are listed the classifications and assignments of pay ranges of state employees coming within the purview of the section, in accordance with the nature of their work and the duties connected with the many positions, offices, and employments involved.

Division (K) of Section 143.09, *supra*, exempts certain positions from the operation of said Section 143.09 and of Section 143.10, Revised Code, and the position in question is not one of those so exempted.

As to the authority of the director of personnel to assign employees to certain classifications, division (B) of Section 143.09, Revised Code, reads in part :

“(B) The director of state personnel shall prepare and may amend from time to time, specifications descriptive of duties, responsibilities, requirements and desirable qualifications of the classifications set forth in this section, *may allocate and reallocate any position, office or employment to the appropriate class* among those set forth in this section on the basis of the duties, responsibilities, requirements and qualifications of such positions, offices or employments, *may assign and reassign employees to the appropriate classifications on the basis of the actual duties being performed*, and may require appointing authorities to furnish the director with such information with respect to personal actions, including data pertinent to position control, as the director may deem necessary and upon such forms as the director may prescribe.

“\* \* \*

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\* \* \*”

(Emphasis added)

The director of state personnel is thus authorized, among other things, to allocate and reallocate any position, office or employment to such class as he deems appropriate in view of the duties, responsibilities, requirements and qualifications that go with a given position, office or employment.

I gather from your letter that the secretary's salary was fixed by the board in September, 1961. In this connection, you ask whether the secretary would be entitled to receive the difference in the salary so fixed in the event the determination of the director of state personnel should place him in a pay range under which the secretary's salary would be higher than the one he is now receiving. In this respect, your attention is directed to Section 143.10 (F), Revised Code, which provides:

"New employees shall be employed at the minimum rate in each pay range except that the director of state personnel may authorize the employment of new employees at a beginning salary or wage equal to the second or third step within the pay range of the particular classification, if employment conditions existing at a particular time require it, subject to the approval of the director of finance as to the availability of funds, provided that all employees in the same classification, in the same location, with a salary or wage below the maximum salary step, are advanced at the same time one step in the salary range for said classification.

"When an employee in the classified service is promoted to a higher class, his salary or wage shall be increased to that salary or wage step in the pay range for the new class which is next above the salary or wage he was receiving prior to such promotion. When an employee in the unclassified service changes from one state position to another, or is appointed to a position in the classified service, or if an employee in the classified service is appointed to a position in the unclassified service, his salary or wage in the new position shall be determined in the same manner as if he were an employee in the classified service. In assigning or reassigning any employee to a classification or to a new pay range, other than as a promotion, the director of state personnel shall assign such employee to such appropriate step in the new pay range as the director shall deem equitable.

*"Such new salary or wage shall become effective on such date as the director of state personnel determines."*

(Emphasis added)

Since the effective date of a new salary is fixed by the director of state personnel, it clearly follows that the secretary of the board could not receive the difference between his present salary and that determined by the director in case the latter was higher. The corollary would, of course, be also true. An employee whose salary, as fixed by the director, would be lower than the one the employee was receiving previously, would not be required to refund the difference.

In conclusion, it is my opinion and you are advised that the salary to be paid for the position of secretary to the state board of cosmetology, created pursuant to Section 4713.02, Revised Code, is subject to the provisions of Chapter 143., Revised Code, pertaining to civil service; and the board may not set the salary for such position.

Respectfully,

MARK McELROY

Attorney General