

Note from the Attorney General's Office:

1965 Op. Att'y Gen. No. 65-108 was modified by
1978 Op. Att'y Gen. No. 78-044.

OPINION 65-108**Syllabus:**

The Director of State Personnel has the authority to conduct examinations and to prepare eligible lists for those employees in the classified service and he may delegate this authority only to those employees who are directly responsible to him.

To: Wayne Ward, Director of State Personnel, Columbus, Ohio
By: William B. Saxbe, Attorney General, June 25, 1965

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

"Your informal opinion is respectfully requested as to the authority of the Director of State Personnel to delegate responsibility for the performance of certain functions to other persons not in the employment of the Department of State Personnel.

"Specifically, does the Director of State Personnel have the authority to delegate to officers or employees of other agencies in the State or county government the responsibility for (1) administering examinations prepared by the Director of State Personnel; (2) prepare examination material to be administered by such officers or employees to applicants for employment in Civil Service positions; (3) determine the nature of any selection and examination process to be used in the determining eligibility for Civil Service employment in a State or county agency; (4) prepare eligible lists resulting from examinations conducted by such officer or employee for purposes of making appointment to Civil Service positions?

"The following background information is offered which may be of assistance to you in considering our request and the reasons for it. During World War II the State Civil Service Commission authorized the establishment of examining boards at various State and county hospitals, institutions and universities. These boards were of two general types. The first, commonly known as a local examining board, usually consisted of three persons. Such a board now exists at each of the State universities. Typically, the composition of the board is made up of a Personnel Officer, a clerical supervisor and a

maintenance supervisor. The other type, known as a special examining board, now exists at a number of county homes for the aged or children and county hospitals. This board consists of the hospital superintendent only.

"These boards were established because of the shortage of personnel during war time and the inability of the State Civil Service Commission to conduct adequate examination programs for the many institutions scattered throughout the State. These boards are now authorized to conduct examinations for certain types of unskilled or semi-skilled positions. A list of the positions covered by these boards is attached to this request. The nature of the examination process has been left entirely to the discretion of the local or special examining board. In practice, we have reason to believe that no written examination is given in the vast majority of cases. Examinations are not given on any scheduled basis, and the applicant may be unaware that he has been subject to an examining process. No names of applicants are reported to the Director of State Personnel except those who are to be appointed to positions. For such persons, forms are submitted which include an examination grade and a \$1.00 examination fee. The employees then have full Civil Service status as certified employees subject to completion of a probationary period. In some cases, they are later promoted to other positions not covered by a local board examining process without competitive examination. In the case of the special examining board, the superintendent is also the appointing authority who selects the persons to be actually hired. No eligible list is prepared by the Director of State Personnel for positions covered by these local and special examining boards.

"In addition to the arrangements described above, the Director of State Personnel has appointed Personnel Officers at some of the State's mental institutions to act as his special examiner and representative in the conducting of examinations. These examinations are prepared by the Director of State Personnel and the results are submitted to him for preparation of an eligible list, on the basis of which appointments are made.

"In summary, we are asking for your opinion as to the legal basis for these certain practices, most of which have been followed for over twenty years in the Civil Service procedures of the State of Ohio."

Section 143.013, Revised Code, states in applicable part:

"All powers, duties and functions of the department of state personnel 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 state personnel, 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;

"(E) To prepare, conduct, and grade all noncompetitive 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 neces-

sary 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;

"* * * * *"

Section 143.07, Revised Code, states in applicable part:

"* * * * *"

"(B) Keep records of his proceedings and records of all applications for examinations and all examinations conducted by him.* * *

"(C) Prepare, continue, and keep in the office of the department, a complete roster of all persons in the classified service. This roster shall be open to public inspection at all reasonable hours. It shall show in reference to each of such persons, his name, address, the date of his appointment to or employment in such service, his salary or compensation, the title of the place or office which he holds, the nature of the duties thereof, and, in case of his removal or resignation, the date of the termination of such service.

"* * * * *"

It is clear from the above sections that the legislature has designated the Director of State Personnel as the public official responsible for the above duties. It is equally clear that he must have control over the examination process from beginning to end. In Section 143.013 (J), Revised Code, quoted above, 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.

In your request you asked about three different types of examiners, local boards, special boards, and

Personnel Officers appointed by the Director of State Personnel.

Concerning local boards and special boards, I conclude that the Director of State Personnel may not delegate authority to them as described in the request letter. I base this on the fact that the Director does not have any control over these boards and I can find no authority for the existence of them.

In the case of the Personnel Officer appointed by the Director, I conclude that the Director of State Personnel may delegate the authority inquired about to him. This is based on the control of the Director over the examination process and the responsibility of the Personnel Officer to the Director, which qualifies him under Section 143.013 (J), Revised Code.

I therefore conclude that the Director of State Personnel has the authority to conduct examinations and to prepare eligible lists for those employees in the classified service and he may delegate this authority only to those employees who are directly responsible to him.