

OPINION NO. 85-038

Syllabus:

R.C. 124.14(A) does not require the Director of Administrative Services to seek the approval of the State Employee Compensation Board prior to filing with the Secretary of State any new, additional, or revised classification specification which describes the duties and responsibilities of a classification and establishes the qualifications for employment in a position within such classification when the classification is already a part of the statewide classification plan and the specification does not purport to alter such plan.

To: Douglas M. Russell, Executive Director, State Employee Compensation Board, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, July 11, 1985

I have before me your request for my opinion in which you query whether the State Employee Compensation Board (Board) has a statutory duty to approve new, additional, or revised classification specifications that have been or are to be filed with the Secretary of State. R.C. 124.14(A) provides for the creation of a statewide classification plan and classification specifications, in part, as follows:

The director of administrative services with the approval of the state employee compensation board shall establish, and may modify or repeal, by rule a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state. The director shall group jobs within a classification so that the positions are similar enough in duties and responsibilities to be described by the same title, to have the same pay assigned with equity, and to have the same qualifications for selection applied.¹ The director, with the approval of the state employee compensation board, shall, by rule, assign a classification title to each classification within the classification plan. However, the director and the board shall consider in establishing classifications, including classifications with parenthetical titles, and assigning pay ranges such factors as duties performed only on one shift, special skills in short supply in the

¹ A "classification" is defined as "a group of positions sufficiently similar in respect to duties, responsibilities, authority, and qualifications so that the same descriptive title may be used for each, the same pay range assigned, and the same examinations conducted." 1 Ohio Admin. Code 123:1-47-01(A)(20). A "classification plan" is "a system of classifications and pay range assignment for each classification." Rule 123:1-47-01(A)(22). See 1 Ohio Admin. Code 123:1-7-03.

labor market; recruitment problems, separation rates, comparative salary rates, the amount of training required, and other conditions affecting employment. The director shall describe the duties and responsibilities of the class and establish the qualifications for being employed in that position; and shall file with the secretary of state a copy of specifications for all of the classifications.² New, additional, or revised specifications shall be filed with the secretary of state before being used. The director with the approval of the board shall by rule assign each classification, either on a statewide basis or in particular counties or state institutions, to a pay range established under section 124.15 of the Revised Code. The director with the approval of the board may assign a classification to a pay range on a temporary basis for a period of time designated in the rule.

The director, with the approval of the state employee compensation board, shall, by rule, assign related classifications, which form a career progression, to a classification series. The director shall, by rule, assign each classification in the classification plan a five-digit number, the first four digits of which shall denote the classification series to which the classification is assigned. When a career progression encompasses more than ten classifications, the director shall, by rule and with the approval of the state employee compensation board, identify the additional classifications belonging to a classification series. Such additional classifications shall be part of the classification series, notwithstanding the fact that the first four digits of the number assigned to the additional classifications do

2

"Specification" is defined as:

a general description of a job classification specifying or giving examples of the kinds of tasks expected to be performed by employees holding positions allocated to that classification, which may include classification title and number, a statement of job function, a grouping of task statements by job duties (ranked by importance), approximate percentages of total job time required for performance of each duty, worker characteristics or behaviors required for successful completion of all tasks within each duty, and minimum qualifications for competition for employment in the classification.

Rule 123:1-47-01(A)(76). 1 Ohio Admin. Code 123:1-7-04 further provides:

The director shall prepare specifications according to division (A) of section 124.14 of the Revised Code. Such specification shall include statements of the essential character of the work of the classification, essential knowledge, abilities, and skills, and the qualifications for persons who are to fill positions so classified. Qualifications shall be stated in terms of specific coursework at recognized institutions, experience, training, or in such other terms as to meet the requirements of the classification. Specifications shall also include a listing of any parenthetical sub-titles which are established for the classification. A copy of each specification shall be filed in the office of the secretary of state. The qualifications listed in the specifications shall be followed in determining admittance to competitive or non-competitive examinations. Parenthetical sub-titles shall be included in the announcement of competitive examinations and shall be entered [in] an employee's civil service record.

not correspond to the first four digits of the numbers assigned to other classifications in the classification series. (Emphasis and footnotes added.)

The foregoing statute thus provides that certain duties regarding the creation of the statewide classification plan are to be performed by the Director of Administrative Services with the approval of the State Employee Compensation Board, *i.e.*, the establishment, modification, and repeal of a statewide job classification plan; the assignment of classification titles; the assignment of each classification to a pay range; the assignment of related classifications to a classification series; the identification of a classification series composed of more than ten classifications. Each of these duties which the Director is required to perform with the approval of the Board must be accomplished by promulgation of a rule. R.C. 124.14(A). In addition, certain duties which are the sole responsibility of the Director must be achieved through adoption of a rule, *i.e.*, the assignment of identification numbers to each classification in the plan. R.C. 124.14(A).

R.C. 124.14(A) also prescribes other duties which the Director is required to perform, *i.e.*, the grouping of similar jobs within a classification; description of the duties and responsibilities of each class; the establishment of qualifications for being employed in a position within a classification. The statutory language does not require that these latter tasks be accomplished through a rule-making process. Further, R.C. 124.14(A) does not specify the manner in which the Director is to perform his duties. Accordingly, such duties may be accomplished in any manner which the Director, in the exercise of his discretion, finds reasonable. See State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1, 11-12, 112 N.E. 138, 141 (1915) (when a public officer is commanded to do a particular thing, but the law does not direct the manner in which it shall be done, "the officer who is required to perform this duty has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method of doing the thing commanded"). Thus, I note that the Director has, on occasion, solicited information, aid, or comment from affected agencies and employee groups during the development and modification of classification specifications. See generally State ex rel. State Transportation Engineers Council of Ohio v. Wilkins, No. 80AP-337 (Ct. App. Franklin County Nov. 20, 1980).

Once the Director has described the duties and responsibilities of the class and established the qualifications for being employed in a position within a classification, R.C. 124.14(A) requires the Director to file a copy of the resulting new, additional, or revised classification specifications with the Secretary of State before such specifications are used. Nowhere in the language of the statute is there a duty imposed upon the Director to seek the approval of the State Employee Compensation Board prior to use of a classification specification. Further, R.C. 124.14(A) does not provide for the Board to review such specifications at any stage of preparation or implementation.

A review of the legislative history of R.C. 124.14(A) supports the foregoing statutory interpretation. See generally R.C. 1.49(C) (a court may consider the legislative history of a statute in order to determine the legislative intent). The statute was enacted by Am. Sub. H.B. 155, 111th Gen. A. (1975) (*eff.* in relevant part Jan. 1, 1976). As passed by the General Assembly, Am. Sub. H.B. 155 provided, in part:

Sec. 124.14. (A) The director of administrative services with the approval of the state employee compensation board shall establish, and may modify or repeal, by rule a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state. The director [with the approval of the board] shall group jobs within a classification so that the positions are similar enough in duties and responsibilities to be described by the same title, to have the same pay assigned with equity, and to have the same qualifications for selection applied. However, the director with the approval of the board shall consider in establishing classifications and assigning pay ranges such factors as duties performed only on one shift, special skills in short supply in the

labor market, recruitment problems, separation rates, comparative salary rates, the amount of training required, and other conditions affecting employment. The director [with the approval of the board] shall describe the duties and responsibilities of the class and establish the qualifications for being employed in that position; [the board] shall file with the secretary of state a copy of specifications for all of the classifications. New, additional, or revised specifications shall be filed with the secretary of state before being used. The director with the approval of the board shall by rule assign each classification either on a statewide basis or in particular counties or state institutions, to a pay range established under section 124.15 of the Revised Code. The director with the approval of the board may assign a classification to a pay range on a temporary basis for a period of time designated in the rule. (Brackets and emphasis added.)

The language which has been placed in brackets in the above quotation was vetoed by the Governor and not repassed by the General Assembly.³ It is, therefore, clear that both the State Employee Compensation Board and the Director of Administrative Services have roles in the establishment and modification of a statewide classification plan. The Director is responsible for grouping jobs within classifications, and for initiating the establishment or modification of the statewide classification plan. The Board has a right of approval over the classification plan developed by the Director. The statute further sets forth certain issues which the Director, when he undertakes the grouping, and the Board, when it undertakes review of the Director's proposed classification plan, are to consider. Once the jobs have been grouped under the classification plan, the Director is to describe the specific duties and responsibilities of each classification, and is to establish the qualifications requisite to employment in a position within each classification. It is this enumeration of duties, responsibilities, and qualifications which is known as a classification specification. The Governor, by his veto, expressly excised any role of the Board in the development of classification specifications. As passed by the legislature, the statute would have provided for the Board's approval of the classification specifications, and would have further provided that, after approval of a classification specification developed by the Director, the Board was to file the approved specification with the Secretary of State. The Governor deleted the Board's authority to review classification specifications, and he also vetoed the language which would have required the Board to file the specifications with the Secretary of State. That responsibility devolves upon the Director under the bill as it was approved by the Governor. As the role of the Board in the development and filing of specifications was removed by the exercise of the veto, the only step necessary for implementation of a new, additional, or revised specification is that the Director file such specification with the Secretary of State before it is used.

³ Am. Sub. H.B. 155, 111th Gen. A. (1975) (eff. in relevant part Jan. 1, 1976), was an appropriation bill. Pursuant to Ohio Const. art. II, §16, "[t]he Governor may disapprove any item or items in any bill making an appropriation of money, and the item or items, so disapproved, shall be void, unless repassed in the manner described by this section for the repassage of a bill." See generally State ex rel. Brown v. Ferguson, 32 Ohio St. 2d 245, 291 N.E.2d 434 (1972) (citing the decisions of foreign courts variously defining the term "item" as a "separate particular," "the particulars, the details, the distinct and severable parts" (citations omitted), and concluding that an item is a provision which is separate and distinct from other provisions in the same bill insofar as its subject, purpose, or amount is concerned); 1975 Op. Att'y Gen. No. 75-059 (syllabus, paragraph 1) ("[t]he power of the Governor under Article II, Section 16, Ohio Constitution, to disapprove 'any item or items in any bill making an appropriation of money' includes the power to disapprove non-appropriation items"). The court in State ex rel. State Transportation Engineers Council of Ohio, Inc. v. Wilkins, No. 80AP-337 (Ct. App. Franklin County Nov. 20, 1980), at pp. 4-5, acknowledged the veto of these portions of Am. Sub. H.B. 155, and implicitly accepted the validity of the veto.

It must be noted that the interpretation of certain aspects of R.C. 124.14(A) was the subject of litigation in Stewart v. Licking County Welfare Dept., No. 77CV-12-5606 (C.P. Franklin County 1978), which was an appeal from a reclassification decision of the State Personnel Board of Review in which the affected employee asserted that his position was improperly classified pursuant to a classification specification that had been filed with the Secretary of State without the approval of the State Employee Compensation Board. The Stewart court upheld the employee's contention. However, the situation in Stewart is clearly distinguishable from that presented in your letter of request. The specification under which the employee had been classified was one of a set of specifications describing the duties of an entire classification series, see R.C. 124.14(A) ("[t]he director, with the approval of the state employee compensation board shall, by rule, assign related classifications, which form a career progression, to a classification series"). The set of classification specifications at issue in Stewart purported to alter the classification plan by eliminating three classifications from the series. Clearly, such a modification of the statewide classification plan requires the approval of the State Employee Compensation Board. R.C. 124.14(A) ("[t]he director. . .with the approval of the. . .board shall establish, and may modify or repeal, by rule a job classification plan. . ."). In contrast, your query concerns only a specification which describes the duties and responsibilities of a class that is already a part of the statewide classification plan, and describes the qualifications for being employed in such classification. You have not indicated that any of the specifications at issue in your request contemplate or purport to accomplish any alteration of the classification plan.

A later case, State ex rel. State Transportation Engineers Council of Ohio, Inc. v. Wilkins, No. 80AP-337 (Ct. App. Franklin County Nov. 20, 1980), also involved application and interpretation of R.C. 124.14(A). The Director had sought the assistance of interested state agencies during the preparation of a new classification plan for the Engineering and Planning Group class series, and had submitted a set of proposed classification specifications to the State Employee Compensation Board for comment. The relator sought a writ of mandamus to compel the Director of Administrative Services to file the proposed specifications with the Secretary of State immediately, rather than await the comment of the Board. The Wilkins opinion, at p. 3, contained dicta in which the court appeared to indicate that specifications developed by the Director must undergo review by the Board.⁴ However, the court's holding merely states that, "[b]ecause of the requirement of R.C. 214.14 (sic) that all proposed job classifications be approved by the State Employee Compensation Board before being filed with Secretary of State, there. . .[was] no clear legal duty. . .to file the proposed job classifications since such approval. . .[had] not yet been given."⁵ Wilkins at p. 4. The concurring opinion clarified this matter. While it recognized, at p. 5, that, "the classification as described by a particular job specification can become part of a classification plan only when approved as such by the Board," the concurring opinion in Wilkins nevertheless also noted that "the veto removed from the Board any authority with

⁴ The Wilkins opinion does not clearly distinguish the terms "classification" and "specification" and "classification plan". As explained supra, notes 1 and 2, a specification describes duties expected to be performed by a person employed in a classification as well as the minimum qualifications necessary for such employment. The classification described by the specification is a grouping of positions having similar duties and qualifications. The classification plan is the system whereby the various classifications are arranged into related series and assigned to pay ranges. See R.C. 124.14(A); note 1 supra.

⁵ R.C. 124.14(A) requires that the statewide job classification plan is to be established by rule. Clearly, any job classification which the Director may propose as an addition to, or alteration of, the statewide classification plan must be approved by the Board, and adopted pursuant to an appropriate rule. R.C. Chapter 119 sets forth the standards for promulgation of such administrative rules. In order to become effective such a rule must be filed with the Secretary of State. R.C. 119.03(D); R.C. 119.04.

respect to placing positions in a class or determining the duties and responsibilities of a class." Thus, I believe that the Wilkins case may be reconciled with the conclusion I have reached herein.

As a final matter, I note that pursuant to R.C. 124.14(A) one could conclude that a classification specification requires Board approval, only if one finds that a classification specification is a part of the statewide classification plan. R.C. 124.14(A) requires that the classification plan be adopted through promulgation of a rule in accordance with R.C. Chapter 119. Since the enactment of R.C. 124.14(A) no classification specification has been adopted in this manner. It thus appears that neither of the administrative entities authorized to implement this provision considers a classification specification to be a part of the statewide classification plan which must be adopted through promulgation of a rule. As discussed in Wilkins, at p. 5, this administrative interpretation may be considered when construing R.C. 124.14(A).

It is, therefore, my opinion and you are advised, that R.C. 124.14(A) does not require the Director of Administrative Services to seek the approval of the State Employee Compensation Board prior to filing with the Secretary of State any new, additional, or revised classification specification which describes the duties and responsibilities of a classification and establishes the qualifications for employment in a position within such classification when the classification is already a part of the statewide classification plan and the specification does not purport to alter such plan.