

**OPINION NO. 83-022****Syllabus:**

Since employees of the Transportation Research Board are paid with funds generated by the Board, rather than with state funds, they are not in the "civil service" or "state service," as those terms are defined in R.C. 124.01 and used in R.C. Chapter 124.

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**To: George J. Arnold, Chairman, Transportation Research Board, East Liberty, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, April 29, 1983**

I have before me your request for an opinion concerning the status of employees of the Transportation Research Board of Ohio. It is my understanding that your question is whether employment with the Transportation Research Board of Ohio constitutes "civil service" or "state service," as defined in R.C. 124.01, for purposes of R.C. Chapter 124.

The Transportation Research Center was created by R.C. 5507.01 "for the conduct of research in automative, vehicular, and related forms of transportation, and for the development of improved highway facilities for vehicular traffic." It is under the control of the Transportation Research Board of Ohio. R.C. 5507.01. The

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Board is a body corporate and politic, subject to the provisions of R.C. Chapter 5507 and "to all provisions of law generally applicable to state agencies which do not conflict with" that chapter. R.C. 5507.01. My predecessor has described the Board as "a rather unique entity with an indisputable state-affiliated identity, but with a quasi-public character distinguishing it from most other state agencies." 1977 Op. Att'y Gen. No. 77-023 at 2-80. See 1980 Op. Att'y Gen. No. 80-033.

R.C. 124.01 includes the following definitions:

As used in Chapter 124. of the Revised Code:

(A) "Civil service" includes all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof.

(B) "State service" includes all such offices and positions in the service of the state, the counties, and general health districts thereof, except the cities, city health districts, and city school districts.

(C) "Classified service" means the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, city school districts thereof, and civil service townships.

These definitions delineate the offices and positions which are subject to the various provisions of R.C. Chapter 124. It is clear that employment with the Transportation Research Board is not employment with a county, city, city health district, general health district, city school district, or civil service township. Therefore, employees of the Transportation Research Board come within these definitions and, thus, within related provisions of R.C. Chapter 124, only if they are in the service of the state, within the meaning of R.C. 124.01.

The concept of employment in the service of the state under R.C. 124.01 was recently discussed by the Court of Appeals of Franklin County in connection with the question whether an employee of the State Teachers Retirement System of Ohio was subject to the civil service provisions of R.C. Chapter 124. In re Ford, 3 Ohio App. 3d 416, 446 N.E.2d 214 (Franklin County 1982), motion to certify the record overruled, No. 82-1127 (Ohio Sup. Ct. Sept. 22, 1982). In that case, the court concluded that employees of the State Teachers Retirement System are not in the state service for purposes of R.C. 124.01 because they are paid solely from trust funds of the board and not from any state funds. The court stated: "In other words, employment in the service of the state under R.C. 124.01 has two requisites: (1) employment by a state agency, and (2) compensation being paid in whole or in part from state funds, whether general or special, regardless of the source of such state funds." Id. at 420, 446 N.E.2d at 218. The court used the term "state funds" to mean moneys "belonging to the state, whether from the general fund or some special fund," id. at 420, 446 N.E.2d at 218, and not to extend to trust funds of a state agency.

The rule set forth in the Ford case appears to be applicable to the question you have raised. As noted above, the Transportation Research Board is clearly affiliated with the state and may, in some sense, be considered a state agency. See, e.g., R.C. 5507.01 (making Board subject to all provisions of law generally applicable to state agencies which do not conflict with R.C. Chapter 5507); Op. No. 77-023 at 2-80 (distinguishing the Board from "most other state agencies"). Whether the Board is a state agency as that term is used in the Ford case is, however, a determination which I need not make, since it is clear that employees of the Board are not paid from state funds.

It is true that there is statutory authority for the Board to receive funds from the General Assembly and use them to pay its employees. R.C. 5507.01 provides that "[a]ll expenses incurred in carrying out [R.C. Chapter 5507] shall be payable solely from funds provided under [R.C. Chapter 5507], appropriated for such purpose by the general assembly, or provided by the emergency or controlling board." R.C. 5507.03(K) authorizes the Board to "[e]mploy managers, superintendents, and retain or contract with consulting engineers, financial

consultants, accounting experts, and architects" and, with approval of the Attorney General, to employ legal counsel. It specifies that such expenses "shall be payable solely from the proceeds of transportation research revenue bonds or notes issued under [R.C. Chapter 5507], from revenues, or from funds appropriated for such purpose by the general assembly or otherwise provided heretofore." See also R.C. 5507.03(E), 5507.03(J), 5507.03(O). The statutory scheme would, therefore, permit the Board to pay its employees with state funds.

You have, however, informed me that the Board "receives no appropriations and subsists upon its own generated income." This conclusion is consistent with that reached by my predecessor in Op. No. 77-023 at 2-82: "[The Transportation Research Board] is an autonomous public entity financially separated by law from the rest of the state." It is analogous to the conclusion reached in In re Ford. See R.C. 5507.10 (moneys, funds, properties, and assets of the Board are held in trust). Further, it is my understanding that no appropriations for the payment of employees of the Board have in fact been made for the current biennium. See Op. No. 77-023. It appears, therefore, that, under the analysis adopted in Ford, funds used to pay employees of the Transportation Research Board are not state funds.

With the understanding that the Transportation Research Board does not use funds appropriated by the General Assembly or, in fact, any funds other than those which it generates, to pay its employees, I conclude that employees of the Board are not paid from state funds and, under the rule set forth in Ford, are not in the service of the state for purposes of R.C. 124.01. They are, therefore, not in the "civil service" or "state service," as those terms are defined in R.C. 124.01 and used in R.C. Chapter 124.<sup>1</sup>

The conclusion that employees of the Transportation Research Board are not in the service of the state under R.C. 124.01 is consistent with the distinctive nature of that Board, see, e.g., R.C. 5507.03(O) (expressly authorizing the Board to provide coverage for its employees under R.C. Chapters 145 (Public Employees Retirement System), 4123 (workers' compensation) and 4141 (unemployment compensation), even though each of those chapters covers state employees, see R.C. 145.01, 4123.01, 4141.01), and with prior opinions of this office, see, e.g., Op. No. 77-023 (concluding that provisions of R.C. 141.15, which govern reimbursement of travel expenses for state officers and employees who are paid from state funds, are not applicable to the Transportation Research Board); 1962 Op. Att'y Gen. No. 3334, p. 807 (concluding that employees of the Ohio Turnpike Commission, a legal entity which is separate and apart from the several counties, the cities, and the state and which pays its employees from the proceeds of turnpike revenues, are not employees in the classified state civil service for purposes of civil service laws); 1939 Op. Att'y Gen. No. 182, vol. I, p. 213 (concluding that employees of bridge commissions, paid from bridge revenues, are not employees of the state, counties,

<sup>1</sup> I note that there is an uncodified statute which may affect the civil service rights of certain employees of the Transportation Research Board. 1971-1972 Ohio Laws, Part I, 1041 (Am. S.B. 508, eff. Oct. 19, 1972), which created the Transportation Research Board, provided that the Board was to be deemed to constitute the continuation of the Ohio Highway Research Board and that employees of the Ohio Highway Research Board would be employees of the Transportation Research Board. Division (A) of Section (3) (uncodified) of that act stated, at 1062:

All personnel of the Ohio highway transportation research board shall be employees of the transportation research board of Ohio, and all such personnel who are in the classified service shall have the same civil service rights, seniority, length of service and compensation. (Emphasis added.)

While it is not clear precisely what effect this provision has, it does appear that this provision should be considered in determining the civil service rights of any employees of the Transportation Research Board who were previously employed by the Ohio Highway Research Board.

cities, or city school districts and, therefore, are not subject to the civil service laws). See generally Spitaleri v. Metro Regional Transit Authority, 67 Ohio App. 2d 57, 426 N.E.2d 183 (Summit County 1980) (statute specifying that employees of a regional transit authority are to be considered public employees within the meaning of R.C. Chapter 145 (Public Employees Retirement System) implies that they are not intended to be public employees for all purposes; they are not entitled by statute to the benefits of vacation leave, sick leave, state holidays or pay ranges); 1965 Op. Att'y Gen. No. 65-47 (concluding that employees of a regional airport authority are subject to PERS but not to civil service statutes).

It is, therefore, my opinion, and you are hereby advised, that, since employees of the Transportation Research Board are paid with funds generated by the Board, rather than with state funds, they are not in the "civil service" or "state service," as those terms are defined in R.C. 124.01 and used in R.C. Chapter 124.