

Note from the Attorney General's Office:

1958 Op. Att'y Gen. No. 58-1978 was overruled in part by 1983 Op. Att'y Gen. No. 83-023.

1978

WELFARE, COUNTY DEPARTMENT OF—APPROVAL OF ATTENDANCE OF COUNTY WELFARE OFFICIALS AT MEETINGS—§325.20 R.C.—APPOINTMENT OF PERSONNEL IN DEPARTMENT, APPROVAL OF COUNTY COMMISSIONERS—§329.02 R.C.—PROMOTION OF APPOINTEES IN WELFARE DEPARTMENT.

SYLLABUS:

1. Under the provisions of Section 325.20, Revised Code, the board of county commissioners is empowered to approve or disapprove attendance by county officers or employees at any meeting or convention at county expense. There is neither implied authority for the delegation of this power nor can it properly be included within the definition of "additional welfare powers and duties" which may be delegated to the county department of welfare pursuant to Section 329.04, Revised Code.

2. Since, under Section 329.02, Revised Code, the director of the department of county welfare is given the power to appoint personnel to positions in his department with the approval of the board of county commissioners, there is no necessity for a delegation of such power by the board, for the board, in reality, has no such power to delegate. It would be improper, however, for the board to delegate its authority to approve the director's appointments.

3. Inasmuch as the board of county commissioners has no power to promote appointees of the director of the department of county welfare, there can be no question of delegation of such non-existent power.

Columbus, Ohio, April 21, 1958

Hon. Harold D. Spears, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

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

"Paragraph (F) of Section 329.04, Ohio Revised Code, provides in part as follows:

"'. the board may designate the County Department of Welfare to exercise and perform any additional welfare powers and duties which the board has.'

"The Director of the Lawrence County Department of Welfare has requested that you interpret this language, determining whether by reason of this provision the County Commissioners may designate the Department of Welfare to exercise and perform the following powers and duties or any part of them:

“(1) To authorize personnel of the Welfare Department, including the Director, to attend Welfare meetings and activities outside this County.

“(2) To appoint personnel to employment in said Department.

“(3) To promote employees of the Welfare Department.”

In considering your first question, we may examine initially Section 329.04, Revised Code, which reads in part :

“The county department of welfare shall have, exercise, and perform, under the control and direction of the board of county commissioners, the following powers and duties :

“(F) * * * The board may designate the county department of welfare to exercise and perform any additional welfare powers and duties which the board has.”

County commissioners have only such powers as are expressly conferred upon them by statute, and such implied powers as are necessary to carry into effect the powers expressly granted. *Elder v. Smith*, 103 Ohio St., 369; *Gorman v. Heuck*, 41 Ohio App., 453.

In Opinion No. 3063, Opinions of the Attorney General for 1953, p. 462, my predecessor stated, at page 464 :

“In ascertaining the powers that may be exercised by a county or by any of its boards or commissions, we are not permitted to indulge, in any degree, the consideration of convenience or desirability, or even the goal of greatest efficiency. Counties are strictly creatures of the legislature, and the county commissioners and other officers of the county have only those powers which the legislature has seen fit to grant and those which are clearly implied and essential to the carrying out of the powers granted. 11 Ohio Jurisprudence, page 332. This rule is particularly emphasized in matters involving the expenditure of public money. In 11 Ohio Jurisprudence, page 573, it is said :

“The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

I must assume that your first question pertains particularly to situations in which the personnel of the Welfare Department seek permission to attend meetings and activities at county expense, in which case the provisions of Section 325.20, Revised Code, are applicable. This section reads :

“Except as otherwise provided by law, no elected county officer, and no deputy or employee of the county, shall attend, at county expense, any association meeting or convention, unless authorized by the board of county commissioners. Before such allowance may be made, the head of the county office desiring it shall make application to the board in writing showing the necessity of such attendance and the probable costs to the county. If a majority of the members of the board approves the application, such expenses shall be paid from the moneys appropriated to such office for traveling expenses.”

The legislature has reposed in the board of county commissioners the power to approve or disapprove attendance at meetings or conventions. There is nothing in the statute which would support an implication that the board may delegate this authority. On the contrary, in light of Opinion No. 3063, *supra*, it seems certain that no delegation may be made. It seems equally clear that the board's power under Section 325.20, *supra*, is not such a power as is encompassed in the phrase “any additional welfare power and duties which the board has” in Section 329.04, Revised Code. Accordingly, I must answer your first question in the negative.

Your second question requires consideration of the provisions of Section 329.02, Revised Code, reading in pertinent part:

“The director, with the approval of the board of county commissioners, shall appoint all necessary assistants, superintendents of institutions under the jurisdiction of the department, and all other employees of the department, excepting that the superintendent of each such institution shall appoint all employees therein.
* * *”

From the foregoing, it is apparent that the director has been given the statutory power to appoint personnel to positions within the department. Before such appointment is effective, however, the board of county commissioners must approve, and to this extent the legislature has divided the authority to appoint, for the post-approval of the board is a *pro tanto* participation in the power to appoint. Since the obvious intention was to split the power to appoint, there can be no implied authority for the board to delegate its power, thus resulting in a merger of power obviously unintended by the legislature. For this reason, I must answer your second question in the negative.

With reference to your third question, I invite your attention again to Section 329.02, Revised Code, which reads in part:

“* * * The assistants and other employees of the department shall be in the classified civil service, and may not be placed in or removed to the unclassified service. * * *”

I invite your attention next to Section 143.24, Revised Code, which reads:

“Vacancies in positions in the classified service shall be filled in so far as practicable by promotions. The commission shall provide in its rules for keeping a record of efficiency for each employee in the classified service, and for making promotions in the classified service on the basis of merit, to be ascertained as far as practicable by promotional examinations, by conduct and capacity in office, and by seniority in service and shall provide that vacancies shall be filled by promotion in all cases where, in the judgment of the commission, it is for the best interest of the service. All examinations for promotions shall be competitive. In promotional examinations, efficiency and seniority in service shall form a part of the maximum mark attainable in such examination. In all cases where vacancies are to be filled by promotion, *the commission shall certify to the appointing authority only the name of the person having the highest rating.* The method of examination for promotions, the manner of giving notice thereof, and the rules governing the same shall be in general the same as those provided for original examinations, except as otherwise provided in sections 143.01 to 143.48, inclusive, of the Revised Code.” (Emphasis added)

Opinion No. 130, Opinions of the Attorney General for 1945, p. 92, sets forth a well reasoned consideration of a comparable problem. It is stated therein, at page 95:

“Section 486-17, General Code, reads in part as follows:

“No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against *by an appointing officer* for religious or political reasons or affiliations. * * * In all such cases of reduction, lay-off or suspension of an employe or subordinate, whether appointed for a definite term or otherwise, *the appointing authority* shall furnish such employe or subordinate with a copy of the order of lay-off, reduction or suspension and his reasons for the same, and give such employe or subordinate a reasonable time in which to make and file an explanation. Such order together with the explanation, if any, of the subordinate shall be filed with the commission. * * * Nothing in this act contained shall limit *the power of an appoint-*

ing officer to suspend without pay, for purposes of discipline, an employe or subordinate for a reasonable period, not exceeding thirty days, excepting that in the case of the chief of police or chief of a fire department or any member of police or fire departments of a municipality, the suspension shall be made in the manner and subject to the right of appeal as herein provided; provided, however, that successive suspensions shall not be allowed, and provided further that the provisions of this section shall not apply to temporary and exceptional appointments made under the authority of section 486-14 of the General Code.' (Emphasis added)

"While this section does not in affirmative words confer upon the head of a department the power to suspend or lay off an employe, it is manifest that that power is assumed, and inasmuch as the director of the department of welfare is the one who is given the power to appoint, it seems clear that he, and he alone, is the one who has the power to lay off or suspend an employe appointed by him." (Emphasis added)

This logic is expressive of my own feeling on this matter. It seems clear that since the director of the department of welfare is given the power to appoint, even though his appointments are subject to the approval of the board, a necessary incident of such power is the power to promote an employee appointed by him, subject, of course, to the applicable statutes governing civil service employees; and in this respect the statute provides no power of approval by the board.

Since the director alone is empowered to promote employees within his department, there is no necessity for a delegation, and in reality, the board of county commissioners has nothing which it can legally delegate; therefore, your third question must also be answered negatively.

For the reasons herein stated it is my opinion in specific answer to your inquiries that:

1. Under the provisions of Section 325.20, Revised Code, the board of county commissioners is empowered to approve or disapprove attendance by county officers or employees at any meeting or convention at county expense. There is neither implied authority for the delegation of this power nor can it properly be included within the definition of "additional welfare powers and duties" which may be delegated to the county department of welfare pursuant to Section 329.04, Revised Code.

2. Since, under Section 329.02, Revised Code, the director of the department of county welfare is given the power to appoint personnel to

positions in his department with the approval of the board of county commissioners, there is no necessity for a delegation of such power by the board, for the board, in reality, has no such power to delegate. It would be improper, however, for the board to delegate its authority to approve the director's appointments.

3. Inasmuch as the board of county commissioners has no power to promote appointees of the director of the department of county welfare, there can be no question of delegation of such non-existent power.

Respectfully,

WILLIAM SAXBE

Attorney General