

OPINION NO. 1511

Syllabus:

1. Credit for college level courses may be awarded on entrance examinations for civil service positions under Section 143.16, Revised Code, provided such courses relate to matters which fairly test the relative capacity of the person examined for the duties of the position.

2. Under Sections 143.01 to 143.48, inclusive, Revised Code, the director of state personnel or a municipal civil service commission may provide in a promotion examination for a civil service position for a credit for educational training in relevant fields.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
By: William B. Saxbe, Attorney General, November 2, 1964

I am in receipt of your request for my opinion on the following questions:

"May under the existing Ohio Civil Service Laws, points or percentage credits be given for the completion of college level courses on civil service examinations when such courses are given in the proposed field of employment of the examination?

"If the answer to this question is in the affirmative, can such application also be uti-

lized in connection with police entrance and/or promotional examinations?"

Civil Service in the State of Ohio is governed by Section 10, Article XV of the Ohio Constitution, which provides:

"Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

The General Assembly of Ohio responded with the enactment of Chapter 143, Revised Code (Sections 486-1 (a) to 486-31, General Code). Section 143.16, Revised Code, provides in material part:

"All applicants for positions and places in the classified service shall be subject to examination which shall be public, and open to all citizens of the United States, within certain limitations to be determined by the director of state personnel, as to citizenship, residence, age, sex, experience, education, health, habit, and moral character;* * * Such examination shall be practical in character, shall be written, or written and oral, as the director determines, and shall relate directly to those matters which will fairly test the relative capacity of the person examined to discharge the particular duties of the position for which appointment is sought. When appropriate, such examination may include physical examinations by a licensed physician, and where the examination is for a position requiring unusual and particular manual skill, it may include a test of manual skill.

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There appears to be no question that this statute gives the right to prescribe educational standards for admission to certain examinations, but the question you have asked is whether this statute also gives the right to award additional credit on an examination to persons having more than the minimum educational standards.

The precise question has never been before the courts of Ohio or my predecessors in office. In State ex rel. Melvin v. Jones, 58 Ohio Law Abs., 324 (1950), it was held as disclosed by the headnote:

"1. The judgment of the Civil Service Commissioners in the exercise of their discretionary powers will not be disturbed by a court so long as they exercise said powers in a reasonable and fair manner."

The case arose when an applicant for a civil service posi-

tion sought to compel the State Civil Service Commission to give him credit on an examination for six and one-half years of farm experience. The examination was in three parts: experience, practical questions and oral. While the question of the validity of allowing credit for experience was not specifically before the court and the court denied the right of the applicant to credit for farm experience the language of the court leaves no doubt that it considered the award of additional credit in appropriate instances to be authorized under Section 486-10, General Code. The provisions of Section 486.10, General Code, under consideration in the Melvin case, vary little, and not materially, from those provisions of Section 143.16, Revised Code, set out above. While this conclusion by the Franklin County Court of Appeals was by way of dictum, I nevertheless feel it is entitled, by analogy, to considerable weight in the absence of any other authority.

The nearly precise question was considered in New York State in Thomas v. Kern, 280 N.Y., 236 (1939). It was adjudged as shown by the headnotes of the court that:

"1. Under section 14 of the Civil Service Law (Cons. Laws, Ch. 7) providing that examinations 'shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of that service into which they seek to be appointed,' the Municipal Civil Service Commission of the City of New York might properly provide, in a proposed examination for policemen, for a credit for educational training in relevant fields and for organized athletic training."

In the course of its opinion the court stated (p. 243):

"In People ex rel. Moriarity v. Creelman (206 N.Y. 570, 577) this court held that the Civil Service Commission 'representing the public did have the right to require that before appointment* * *fitness should be measured and established by any test honestly and reasonably appropriate to that end* * *' It is urged, however, that a credit for educational training in a relevant field constitutes a preference or bonus. This is not so for the reason that a preference or bonus is an arbitrary award given without reference to qualifications for the position, whereas a credit for educational training in a relevant field* * *is based upon qualifications and, therefore, does not constitute a preference or bonus. * * *

"It, therefore, follows that the Municipal Civil Service Commission was not arbitrary or unreasonable when it arranged for a credit for educational training in relevant fields * * *"

The court arrived at its decision construing statutory provisions nearly identical to those controlling in Ohio.

Upon consideration, I have no hesitancy in concluding that

examinations which carry credits for educational attainment may meet the competitive principle expressed in the civil service laws of Ohio. I am less sure of the statutory authority under Section 143.16, *supra*, to grant educational credit--as contrasted to prescribing minimum educational standards for admission to a civil service examination. In view of the above cited cases, however, I am constrained to conclude that in entrance examinations under Section 143.16, Revised Code, credit may be given for completion of college level courses provided that such courses relate to matters which fairly test the relative capacity of the person examined for the duties of the position sought.

Your second question is whether credit for educational standards in excess of a minimum may be given in entrance examinations and promotional examinations for policemen.

A policeman's entrance examination is no different than the entrance examination for any other civil service position, and this part of your second question is disposed of by my answer to your first question.

Promotional examinations, however, are separately treated in Section 143.16, Revised Code, it being provided therein:

* * * * *

"Applicants taking promotion examinations, which shall be in writing, shall receive credit for seniority, which shall be determined as follows: one per cent of the total grade attainable in such examination for each of the first four years of service, and six-tenths per cent of such total grade for each of the next ten years of service. The director shall have control of all examinations, except as otherwise provided in sections 143.01 to 143.48, inclusive, of the Revised Code. * * *

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In addition, it is provided in Section 143.24, Revised Code, in material part:

"Vacancies in positions in the classified service shall be filled in so far as practicable by promotions. The director of state personnel shall provide in his 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 director, 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. * * *"

It will be noted that in promotion examinations it is required that credit be given for seniority. I am of the opinion, however, that this mandatory credit for seniority does not preclude granting credit for educational accomplishment so long as it relates to matters which fairly test the relative capacity of the person examined. It appears to me that education in a relevant field can be an appropriate test of fitness for promotion as well as entrance and I conclude that the director of state personnel or a municipal civil service commission (under Section 143.30, Revised Code) may by rules adopted pursuant to Sections 143.01 to 143.08, inclusive, Revised Code, give educational credit in promotional examinations.

Your questions have been directed to the civil service laws of Ohio and accordingly, I have given no consideration to the adoption of rules by a municipal corporation under Section 10, Article XV, Constitution of Ohio; the "home rule" amendment.

In specific answer to your questions therefore, I am of the opinion that:

1. Credit for college level courses may be awarded on entrance examinations for civil service positions under Section 143.16, Revised Code, provided such courses relate to matters which fairly test the relative capacity of the person examined for the duties of the position.

2. Under Sections 143.01 to 143.48, inclusive, Revised Code, the director of state personnel or a municipal civil service commission may provide in a promotion examination for a civil service position for a credit for educational training in relevant fields.