

**OPINION NO. 68-171**

**Syllabus:**

A board of county commissioners is without authority to contract with a private firm to render clerical services when said services fall directly within a job category specifically assigned by Chapter 143, Revised Code, to members of the classified civil service.

**To: Fred V. Skok, Lake County Pros. Atty., Painesville, Ohio**  
**By: William B. Saxbe, Attorney General, December 19, 1968**

I am in receipt of your request for my opinion wherein you describe the following situation. The Lake County Clerk of Courts employed a number of individuals from a private secretarial agency known as "Kelly Girls" to perform clerical functions and for other secretarial purposes required by the clerk. When the county auditor questioned the validity of this arrangement, the county commissioners by resolution contracted directly with the secretarial agency. In return for the clerical employees required by the clerk's office, the county commissioners agreed to pay a set amount to the agency, who would in turn pay their own employees working in the clerk's office. The auditor, however, refused to certify the bills submitted by the agency as he maintains the commissioners' action was unauthorized by law. The question therefore arises as to whether the commissioners may fill clerical vacancies in the clerk's office by a personal service contract with a private secretarial agency.

I note from your request that the duties performed for the clerk of courts under the contract by the employees provided by the private agency are primarily clerical in nature and are performed in the clerk's office under the direct supervision of the clerk. Section 143.01, Revised Code, places all offices and positions of trust or employment in the service of the county in the Civil Service. Clearly therefore, the positions now occupied by the employees of the secretarial agency are such that would ordinarily be occupied by county civil service employees. It can only follow that the real issue is whether or not the county commissioners have the power to contract with a person or persons to render personal services when said service falls directly within a job category specifically assigned by the Civil Service laws of Ohio to members of the Civil Service.

Section 10, Article XV of the Ohio Constitution 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."

Section 143.03, Revised Code, provides in pertinent part:

"No person shall be appointed \* \* \* as an officer or employee in the civil service, in any manner or by any means other than those prescribed in sections 143.01 to 143.48, inclusive, of the Revised Code, and the rules of the director of state personnel or the municipal civil service commission within their respective jurisdictions."

Section 143.08, Revised Code, outlines the procedures by which public employees are appointed to civil service positions. I find no authorization in this section for the method utilized by the Lake County Commissioners to fill clerical positions in the Lake County Clerk of Courts' office.

However, you point out in your request for my opinion that the appointing authority was unable to locate qualified personnel

to perform the clerical functions under discussion. Therefore, further inquiry must be undertaken to determine whether the means undertaken by the commissioners to fill the positions are authorized under the code.

Section 143.23, Revised Code, authorizes emergency appointments to civil service employment by permitting provisional employees to fill classified positions without competitive exams; however, no authority is granted by this section to fill positions normally held by classified civil service personnel by a personal service contract between an appointing authority and a private agency. Clearly, therefore, Section 143.23, supra, is inapplicable to the situation you describe, for although an emergency situation appears to exist, the county commissioners have not appointed provisional employees as provided by this section, but instead, have permitted a private firm to hire and provide the required clerical help.

Further research of Chapter 143, Revised Code, indicates that the only possible authorization for the commissioners' act would come from Section 143.10 (F), Revised Code, which provides in pertinent part:

"(F) \* \* \* Sections 143.09 and 143.10 of the Revised Code do not repeal any authority of any department or public official to contract with or fix the compensation of professional persons who may be employed temporarily for work of a casual nature or for work on a project basis."

Thus it would appear that the validity of the contract depends upon the authority of the county commissioners so to act.

It is well established in Ohio that the board of county commissioners being an instrumentality of the state government has only those powers as are conferred by law. Many cases could be cited in support of this proposition, but it is deemed sufficient to quote from the statement of Matthias, J. in the case of Elder v. Smith, 103 Ohio St. 369 (1921), at page 370, where it is stated:

"It has long been settled in this state that the board of county commissioners has such powers and jurisdiction, and only such as are conferred by statute. \* \* \*"

In reviewing Chapter 307, Revised Code, which outlines the powers and duties of the various boards of county commissioners, I find no statutory authorization which would permit the county commissioners to contract with a private agency to provide clerical and secretarial personnel to fill positions ordinarily held by classified civil service employees. The powers and duties are set forth in Sections 307.14 to 307.19, inclusive, of the Revised Code, and there is no statutory authorization in these sections which would permit the county commissioners to fill jobs normally held by members of the civil service by entering into personal service contracts with a private firm to provide clerical assistance regardless of the circumstances.

I can only conclude that the Lake County Board of County Commissioners exceeded their statutory authority by contracting

for these particular personal services. Chapter 143, supra, is clear. Appointing authorities are directed to appoint only those applicants qualified under said chapter to positions in the civil service. Although Section 143.10 (F), supra, does not repeal any authority of an appointing authority to contract for temporary work of a casual nature, there is nothing in Chapter 307, supra, that would manifest an intention by the legislature permitting the county commissioners to contract with a private firm whereby said firm would provide clerical help to fill positions ordinarily held by civil service employees.

Accordingly, it is my opinion and you are hereby advised that a board of county commissioners is without authority to contract with a private firm to render clerical services when said services fall directly within a job category specifically assigned by Chapter 143, Revised Code, to members of the classified civil service.