

2037

APPLICANTS FOR POSITIONS AND PLACES IN THE STATE SERVICE ARE REQUIRED TO FURNISH PROOF OF CITIZENSHIP AND PROOF OF PAST MILITARY SERVICE—§§143.16 & 143.18, §4112.02, R.C.

SYLLABUS:

Sections 143.16 and 143.18, Revised Code, as special statutes authorizing the director of state personnel to require that applicants for positions and places in the state service furnish proof of citizenship and proof of past military service, take precedence over the provisions of Section 4112.02, Revised Code, dealing with fair employment practices, and the provisions of said Section 4112.02 do not preclude the director from requiring such proof of citizenship and proof of past military service.

Columbus, Ohio, March 8, 1961

Hon. James T. Welsh, Director, Department of Personnel
Ohio Departments Building, Columbus, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“We are requesting your opinion on the interpretation of Sections 143.16 and 143.18 of the Revised Code in relation to Section 4112.02 (E) (1).

“Specifically we are often placed in position to require proof of citizenship and military service record.

“Our questions are:

1. Can we continue to require proof of citizenship prior to employment and prior to open examination as we have been doing for years? This in compliance with 143.16 and 143.18 of the Revised Code.

2. Can we continue to require proof of military service prior to employment and prior to taking open examination as we have been doing for years? Military service increases applicants score on examination by 20% and affects his standing on Certification List.”

Section 143.16, Revised Code, reads in part as follows:

“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, provided any soldier, sailor, marine, coast guardsman, member of the auxiliary corps as established by congress, member of army nurse corps or navy nurse corps, or red cross nurse who has served in the army, navy, or hospital service of the United States, and such other military service as is designated by congress, in the war with Spain, including the Philippine insurrection and the Chinese relief expedition, or from April 21, 1898, to July 4, 1902, World War I, World War II, or during the period beginning May 1, 1949, and lasting so long as the armed forces of the United States are engaged in armed conflict or occupation duty, or the selective service or similar conscriptive acts are in effect in the United States, whichever is the later date, who has been honorably discharged therefrom, and is a resident of Ohio, may file with the director a certificate of service and honorable discharge, whereupon he shall receive additional credit of twenty per cent of his total grade given in the regular examination in which he receives a passing grade. * * *

(Emphasis added)

The portion of Section 143.18, Revised Code, here pertinent, reads as follows:

“The director of state personnel shall require persons applying for admission to any examination, provided for by sections 143.01 to 143.48, inclusive, of the Revised Code, or by the rules of the director prescribed under such sections, to file with the director within a reasonable time prior to the proposed examination a formal application in which the applicant shall state under oath or affirmation:

“(A) Full name, residence, and post-office address:

“(B) Age and place and date of birth;

“(C) Health and physical capacity for the public service sought;

“(D) Business, employments, and residences for five previous years;

“(E) Such other information as may reasonably be required, touching the applicant’s merit and fitness for the public service sought; but no inquiry shall be made as to any religious or political opinions or affiliations of the applicant.

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While your request does not so specifically state, I assume that the

question concerns a possible conflict with Section 4112.02, Revised Code, dealing with fair employment practices, and providing:

“It shall be an unlawful discriminatory practice:

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“(E) Except where based on a bona fide occupational qualification certified in advance by the commission, for any employer, employment agency or labor organization prior to employment or admission to membership, to:

“(1) Elicit or attempt to elicit any information concerning the race, color, religion, national origin, or ancestry of an applicant for employment or membership;

“(2) Make or keep a record of the race, color, religion, national origin, or ancestry of any applicant for employment or membership;

“(3) Use any form of application for employment, or personnel or membership blank seeking to elicit information regarding race, color, religion, national origin or ancestry;

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It is a general rule that the state is not bound by the terms of a general statute unless the statute expressly so provides (See Opinion No. 4231, Opinions of the Attorney General for 1954, page 470). In this regard, I note that Section 4112.01, Revised Code, makes the state an “employer” under Sections 4112.01 to 4112.08, inclusive, Revised Code, thus, in general, the state is presumably bound by the provisions of those sections.

Regarding proof of citizenship, Section 143.16, *supra*, states that the examinations are open to *all citizens of the United States*. In determining whether an applicant is eligible to take an examination, the director must, therefore, determine whether the said applicant is a citizen, and the section requires him to so determine.

Section 143.16, *supra*, authorizes additional examination credit for certain past military service. In order to give such credit it is obviously necessary to verify the military service, and the section clearly states that the additional twenty per cent is given upon the filing of a certificate of service and honorable discharge.

It will be noted that Sections 143.16 and 143.18, *supra*, are special statutes so far as they deal with the duties of the director of state personnel

in giving examinations. Section 4112.02, *supra*, on the other hand is a general statute dealing with employment practices. It is a general rule of law that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter (*Fisher Bros. Co. v. Bowers*, 166 Ohio St., 191). Accordingly, I do not deem it necessary to determine whether a conflict exists as to these statutes since, even if there were a conflict, the provisions of Sections 143.16 and 143.18, *supra*, as special statutes, would take precedence over the provisions of Section 4112.02, *supra*, a general statute.

Answering your specific question, therefore, it is my opinion and you are advised that Sections 143.16 and 143.18, Revised Code, as special statutes authorizing the director of state personnel to require that applicants for positions and places in the state service furnish proof of citizenship and proof of past military service, take precedence over the provisions of Section 4112.02, Revised Code, dealing with fair employment practices, and the provisions of said Section 4112.02 do not preclude the director from requiring such proof of citizenship and proof of past military service.

Respectfully,

MARK McELROY

Attorney General