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**SYLLABUS:**

1. The director of the county welfare department cannot lay-off or discharge an employee of the department without the approval of the board of county commissioners. Opinion No. 6316, Opinions of the Attorney General for 1956, approved and followed.

2. An employee of the department of county welfare may be laid-off for reasons of economy.

3. The board of county commissioners may discharge the county welfare director and appoint a successor if the provisions of Section 143.27, Revised Code, are followed.

Columbus, Ohio, November 5, 1963

Hon. John L. Beckley  
Prosecuting Attorney  
Vinton County  
McArthur, Ohio

Dear Sir:

I have before me your request for my opinion which reads in part as follows:

“The Vinton County Board of Commissioners has requested an opinion relative to their duties and authority under Section 329.02 Ohio Revised Code.

“The facts are as follows: The County Director of Public Welfare has ordered a ‘temporary lay-off’ for the welfare departments case worker based upon economic reasons.

“The order from the welfare director cites Ohio Revised Code Section 329.02 and 1945 O.A.G. 130 which states the county commissioners must approve appointments but the director may make a reduction, dismissal or lay-off of any such appointee when he deems it necessary without the approval of the county commissioners.

“The Board of commissioners have received conflicting opinions from various state agencies regarding this authority consequently they request the answer to the following:

“1. Does the county welfare director have authority, under the law, to order a discharge or temporary lay-off of an employee?

“2. If the answer to the above is affirmative, is it necessary for the Board of Commissioners to approve the lay-off or discharge before said lay-off or discharge is effective?

“3. If the Director is permitted to lay-off an employee for reasons of economy must the board of commissioners approve said economy measures before said employee can be given a temporary lay-off or discharge?

“4. Does the County Board of Commissioners under the law have authority to discharge the County Welfare Director and appoint a successor?”

It must be first determined whether such case worker may be laid-off at all for economic reasons. Section 329.02, Revised Code, provides that assistants and other employees of the county department of welfare shall be in the classified civil service. A case in point held that an employee in the civil service may be laid-off for economic reasons. *The State ex rel. Buckman v. Munson, Dir.*, 141 Ohio St., 319, (1943), citing *Curtis, Safety Director, et al., v. The State, ex rel. Morgan*, 108 Ohio St., 292, (1923). Branch #1 and #2 of the *Buckman* syllabus states:

“1. The fundamental purpose of civil service laws and rules is to assure appointments and promotions in the public service based upon merit and fitness and to safeguard appointees in the classified service against unjust charges of misconduct or inefficiency and from being unjustly discriminated against for religious or political reasons or affiliations.

“2. Such provisions, however, do not restrict public

authorities in their bona fide efforts to effect necessary and desirable economies, or to prevent the laying off of an unessential employee for reasons of economy. (*Curtis, Safety Dir., v. State, ex rel. Morgan*, 108 Ohio St., 292, approved and followed.)”

Since the case worker referred to in your letter may be laid-off for economic reasons, it remains to be determined who has the authority to lay-off such employee. Again, there is authority in this area; Opinion No. 6316, Opinions of the Attorney General for 1956. It is stated therein at page 158:

“\* \* \* A director of a county department of welfare cannot dismiss, lay-off or reduce in pay any employee of the department without the approval of the board of county commissioners; nor may a position within the department be abolished without such approval.

“\* \* \* \* \* \* \* \* \*”

(Emphasis added)

The basis of this opinion was that by statutory amendment to Sections 2511-3, 2511-4 and 2511-5, General Code (effective June 13, 1947) the legislature had placed complete control of the county department of welfare in the county commissioners. This control is continued under chapter 329, Revised Code.

The opinion in effect overruled Opinion No. 130, Opinions of the Attorney General for 1945, which ruled that:

“The director of a county welfare department \* \* \* may make a reduction, dismissal or lay-off of any such appointees when he deems it necessary in the proper administration of said department, without the approval of the county commissioners.”

Opinion No. 130, *supra*, was rendered prior to the amendments relied on in the 1956 opinion. Since a complete discussion of this problem was given in this opinion, I do not deem it necessary to reiterate the reasoning and arguments set forth there.

In concurring with Opinion No. 6316, Opinions of the Attorney General for 1956, I conclude that a county welfare director may not order a lay-off or discharge an employe of the department without the approval of the county board of commissioners.

In response to your last question, Opinion No. 6335, Opinions of the Attorney General for 1943, held that:

“The position of county director of welfare created under the provisions of Section 2511-1, General Code, (Section 329.01, Revised Code), is in the classified civil service.”

See also Section 143.08 (A) (9), Revised Code.

This opinion was cited with approval in Opinion No. 1397, Opinions of the Attorney General for 1946.

Since the director of county welfare is in the classified civil service he may be removed by the appointing authority, (here the board of county commissioners), for the reasons set forth in Section 143.27, Revised Code, which relate to the employees incompetency, inefficiency, dishonesty, etc.

It is therefore my opinion and you are accordingly advised that:

1. The director of the county welfare department cannot lay-off or discharge an employee of the department without the approval of the board of county commissioners. Opinion No. 6316, Opinions of the Attorney General for 1956, approved and followed.

2. An employee of the department of county welfare may be laid-off for reasons of economy.

3. The board of county commissioners may discharge the county welfare director and appoint a successor if the provisions of Section 143.27, Revised Code, are followed.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General