

OPINION NO. 78-052**Syllabus:**

Employees of state community college districts created pursuant to R.C. Chapter 3358 are employees in the service of the state for the purposes of R.C. Chapter 124, regardless of whether such employees were in the service of a general and technical college prior to the November 4, 1977, effective date of Am. S.B. 229.

To: Richard D. Jackson, P.E., Director, Department of Administrative Services, Columbus, Ohio
By: William J. Brown, Attorney General, August 25, 1978

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

Your opinion is respectfully requested on certain questions arising from the interpretation of Sections 3354.02 and 3358.01 through 3358.10 of the Ohio Revised Code. These sections were recently enacted or revised by Amended Senate Bill No. 229, effective November 4, 1977. In addition to enacting or revising the above sections, this bill also changed Shawnee State College, Southern State College and Edison State College from state general and technical colleges to state community colleges.

Our questions are as follows:

1. What effect does this change in status have on the employees of Shawnee, Southern and Edison who in the past were considered to be state employees and therefore covered by Ohio's civil service law, Chapter 124 of the Ohio Revised Code? Do these employees continue to be considered state employees covered by Chapter 124, or are they now exempt from this chapter of the code? It is our understanding that employees of community colleges are not considered to be state employees and therefore are not subject to Chapter 124. However, there seems to be some distinction in the law between community colleges and state community colleges. Therefore, we feel that a clarification of the status of employees of state community colleges is needed.

2. Will future state community colleges created under Sections 3358.01 through 3358.10 of the Ohio Revised Code be subject to Chapter 124?

For the purposes of R.C. Chapter 124, "civil service" is defined by R.C. 124.01 as follows:

"Civil service" includes all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof.

Thus, an employee in the service of one of the entities enumerated above is subject to the civil service provisions of R.C. Chapter 124. There are, however, a number of political subdivisions of the state which are not included within the coverage of R.C. Chapter 124. See, e.g., 1939 Op. Att'y Gen. No. 182, p. 213 (employees of bridge commissions not subject to the civil service laws); 1919 Op. Att'y Gen. No. 125, p. 217 (employees of a park district not within the scope of the civil service laws); 1918 Op. Att'y Gen. No. 1645, p. 1594 (employees and officers of a district tuberculosis hospital not within the provisions of the civil service act.) Consequently, if the employees and officers of a state community college district created pursuant to R.C. Chapter 3358 may be said to be in the service of a state institution, they are subject to the civil service provisions of R.C. Chapter 124. Conversely, if a state community college district is a political subdivision separate and distinct from the state, its employees and officers must be outside the purview of the civil service laws, since such districts are not political subdivisions included under the terms of R.C. 124.01.

An examination of the structure of state community college districts created pursuant to R.C. Chapter 3358 is, thus, essential to the resolution of your questions. Before undertaking such an examination, however, I believe that a brief review of the status of two other institutions of higher learning will highlight the issues underlying your question. A state university is an instrumentality of the state. Thacker v. Bd. of Trustees of Ohio State Univ., 35 Ohio St.2d 49 (1973); Wolf v. Ohio State Univ. Hospital, 170 Ohio St. 49 (1959). Because a state university is an instrumentality of the state, one of my predecessors, in 1965 Op. Att'y Gen. No. 65-79, concluded that employment in the service of a state university is state service within the meaning of the civil service laws.

In contrast, in 1962 Op. Att'y Gen. No. 3073, p. 486, another of my predecessors took cognizance of the status of a community college district created pursuant to R.C. Chapter 3354 as an entity separate and distinct from the state. My predecessor took note of the fact that appointment to the board of trustees of such a district was a matter entrusted primarily to commissioners of the county or counties comprising the district. He further observed that the terms of R.C. 3354.01 and 3354.03 specify that a community college district is a political subdivision of the state vested with the powers of eminent domain, taxation and assessment. It was, therefore, his conclusion that the employees of a community college district created pursuant to R.C. Chapter 3354 were employees in the service of a political subdivision not included within the scope of what is now R.C. Chapter 124. I concur and follow my predecessor's reasoning.

However, the structure of a state community college district created pursuant to R.C. Chapter 3358 differs both from that of a state university and that of a community college created pursuant to R.C. Chapter 3354. Prior to November 4, 1977, the effective date of Am. S.B. 229, R.C. 3358 provided for the creation of institutions known as state general and technical colleges. These institutions could be created by several methods, including proposal by the trustees of a state university, proposal by the trustees of a technical college district, proposal by a board of county commissioners and petition of the electorate of a county. It is my understanding that the three state general and technical colleges created pursuant to R.C. Chapter 3358 were chartered by the Ohio Board of Regents and functioned as state institutions.

Am. S.B. 229, effective November 4, 1977, however, altered both the name of these institutions and the powers assigned the trustees thereof. Under the terms of Section 3 of the Act, the three existing state general and technical colleges

became state community colleges and the counties these three institutions were chartered to serve became state community college districts. The stated purposes of Am. S.B. 229 were:

[T]o change the designation of state general and technical colleges to "state community colleges," to assign state community colleges most of the powers and duties of community colleges, to establish the minimum population necessary to create a state community college district, and to require that trustees of state community colleges be residents of the college districts.

The amended terms of R.C. 3358.01(A) define a state community college district as "a political subdivision composed of the territory of a county, or two or more contiguous counties . . . having a population of at least one hundred and fifty thousand . . ." Because a state community college district is now, under the terms of R.C. 3358.01, defined as a political subdivision, it is no longer clearly an instrumentality of the state. Thus, on the basis of the reasoning set forth in 1962 Op. Att'y Gen. No. 3073, p. 486, it might be said that the amended provisions of R.C. 3358.01(A) imply that employees of a state community college district are no longer employees in the service of the state.

The conclusion reached in the 1962 Opinion, however, was reached not solely on the basis that a community college district is defined as a political subdivision under the terms of R.C. 3354.01, but, rather in reliance upon this designation of a body entrusted under the terms of R.C. 3354.03 with the traditional governmental powers of eminent domain, taxation and assessment. While the amended terms of R.C. 3358.01(A) define a state community college district as a political subdivision, an examination of the provisions of R.C. Chapter 3358 indicate that the district cannot be readily classified as either an entity separate and distinct from the state or as an instrumentality of the state.

In contrast to the powers of taxation, eminent domain and assessment conferred upon a community college district under the terms of R.C. 3354.03 and 3354.12, R.C. 3358.09 specifies that the General Assembly shall support a state community college by such sums of money and in such manner as it may provide. Under the terms of R.C. 3358.09, support for a state community college may be derived from other sources; however, the trustees thereof have not been vested with the power to tax or to appropriate property. In enumerating the powers of the trustees of a community college district, R.C. 3354.09(K) specifies that the board may receive and expend gifts and grants from the state. No analogous power is conferred upon the trustees of a state community college district under the terms of R.C. 3358.08, since R.C. 3358.09 provides for direct funding by the General Assembly. Under the terms of R.C. 3354.05, six of the nine trustees of a community college district are appointed by commissioners of the county or counties comprising the district, with the remaining three trustees appointed by the governor. In contrast, R.C. 3358.03 provides for the appointment of all nine trustees of a state community college district by the Governor, with the advice and consent of the Senate.

In summary, then, under the terms of R.C. Chapter 3358, a state community college district has features common to both the autonomous community college district created under R.C. Chapter 3354 and the state universities which are clearly instrumentalities of the state. While the terms of R.C. Chapter 3358 suggest that the districts therein created operate with what may be a greater degree of autonomy than that enjoyed by a state university, the General Assembly has not seen fit to clothe the state community college districts created therein with those most significant indicia of an entity separate and distinct from the state, the powers of taxation, assessment and eminent domain. The government and operation of such districts is entrusted to a board of trustees appointed by the chief executive officer of the state with the advice and consent of the Senate. The support of such districts is a matter reserved to the General Assembly. It is,

therefore, my conclusion that the employees of state community college districts created and operated under R.C. Chapter 3358 should, for the purposes of R.C. Chapter 124, be regarded as employees in the service of the state. This conclusion renders any consideration of a difference in status between employees of the three existing districts and those of districts subsequently created unnecessary.

In specific answer to your question, it is my opinion, and you are so advised, that employees of state community college districts created pursuant to R.C. Chapter 3358 are employees in the service of the state for the purposes of R.C. Chapter 124, regardless of whether such employees were in the service of a general and technical college prior to the November 4, 1977, effective date of Am. S.B. 229.