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IN REMOVING A STATE EMPLOYEE, THE APPOINTING AUTHORITY MUST PREPARE AN ORDER OF REMOVAL STATING THE REASONS THEREOF AND FILE IT WITH THE DIRECTOR OF STATE PERSONNEL, AND THE STATE PERSONNEL BOARD OF REVIEW, AND FURNISH THE EMPLOYEE WITH A COPY OF SAID ORDER AND NOTIFY THE EMPLOYEE OF THE DATE OF FILING ON OR PRIOR TO THE DATE THE ORDER IS FILED. IN REMOVING AN EMPLOYEE THE APPOINTING AUTHORITY MUST COMPLY WITH ALL THE REQUIREMENTS ABOVE OR THE REMOVAL WILL BE INVALIDATED.

SYLLABUS:

1. In removing a state employee pursuant to Section 143.27, Revised Code, the appointing authority must prepare an order of removal stating the reasons therefor, must file the order with the director of state personnel and with the state personnel board of review, and must furnish the employee with a copy of the order; and the employee must be furnished with said copy, and notified by the appointing authority of the date of the filing of the order, on or prior to the date on which the order is filed.

2. In removing an employee under said Section 143.27, the appointing authority must comply with all of the requirements noted in "1." above, and failure to meet any of said requirements would render the attempted removal invalid.

Columbus, Ohio, January 25, 1962

Hon. Carl W. Smith, Chairman  
Board of Review, Department of State Personnel  
Ohio Departments Building, Columbus, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

"On November 20, 1961, this Board received an order of removal removing a Liquor Control Investigator I from the position, effective November 25, 1961. On December 5, 1961 at 11:23 A.M., the Board received a telegram from the employee appealing from the order of removal filed on November 20, 1961.

“The following questions arise:

- “1. Whose responsibility is it, if anyone’s, to inform the employee as to the date of filing with this Board?
- “2. Is the appointing authority required to give the employee a copy of the order of removal on or prior to the date of filing with this Board?
- “3. Would failure of the appointing authority to notify the employee on or prior to the date of filing with this Board be sufficient reason for this Board to
  - “a. consider the order of removal illegal due to insufficient notification of the employee,
  - “b. extend the period during which an appeal could be filed with this Board.
- “4. Is there any authority for this Board to use its discretion to rectify any injustice which may arise due to the change in the wording of this section of the law until such time as employees and appointing authorities are fully advised as to procedure to be followed.”

Section 143.27, Revised Code, here pertinent, reads, in part, as follows:

“The tenure of every officer or employee in the classified service of the state and the counties, cities, city health districts, and city school districts thereof, holding a position under sections 143.01 to 143.48, inclusive, of the Revised Code, shall be during good behavior and efficient service and no such officer or employee shall be reduced in pay or position, suspended, or removed, except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the director of state personnel or the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office.

“In any case of reduction, suspension of more than five working days, or removal, the appointing authority shall furnish such employee with a copy of the order of reduction, suspension, or removal, which order shall state the reasons therefor. Such order shall be filed with the director of state personnel and state personnel board of review, or the commission, as may be appropriate.

“Within ten days following the filing of such order, the employee may file an appeal, in writing, with the state personnel board of review or the commission. In the event such an appeal is filed, the board or commission shall forthwith notify the ap-

pointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the board or commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority.

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Thus, where a state employee is removed by his appointing authority, the appointing authority must furnish him with a copy of the order, and the order must be filed with the director of state personnel and with the state personnel board of review. Within ten days following the filing of the order, the employee may file a written appeal with the state personnel board of review. The section does not state whether the order should be filed on the same date that the copy is furnished the employee, nor is there any expressed requirement that the employee be notified of the date of filing. I believe, however, that the intent of the legislature may best be ascertained by reading all pertinent provisions together.

It appears clear that, under the section, the employee is to be given ten days in which to file an appeal, and it is likewise clear that he would not be given the benefit of the ten day period if he were not made aware of the date of the filing of the order as of the date it was filed. The intent of the legislature as to the ten day appeal period should here be given strong consideration. And regarding such intent, the general rule is stated in 50 Ohio Jurisprudence 2d, Section 169, page 139, as:

“The primary and paramount rule in the interpretation or construction of statutes is to ascertain, declare, and give effect to the intention of the legislature if it is possible to do so.

“Negatively stated, the rule is that the construction adopted should not be such as to defeat the obvious intention of the legislature or do violence to it, wholly or partially. It is not the function of a court to give to a statute an operation which the legislature does not intend.”

I am therefore, of the opinion that under Section 143.27, *supra*, the appointing authority has the implied duty to notify the employee of the date of the filing of the order before, or on, the date of filing.

Further, since the order of removal must state the reasons for removal, the intent must have been to allow the employee to consider such reasons in determining whether he will appeal; and to do this during the ten day appeal period, the employee would need the copy of the order on or prior

to the date of filing. In view of this situation, and in view of the fact that in the section the provision as to furnishing the copy precedes the provisions as to filing, I conclude that the copy of the order should be furnished the employee on or prior to the date of filing.

In view of my above conclusions, it follows that certain acts must be completed in a removal under Section 143.27, *supra*. First, an order of removal, stating the reasons for the removal, must be prepared by the appointing authority. Second, the order must be filed with the director of state personnel and state personnel board of review. Third, a copy of the order must be given to the employee by the appointing authority on or before the date of filing, and the employee must be notified of the date of filing on or before the date of said filing. If any of these requirements are not followed by an appointing authority in an attempted removal, then I would not consider that the removal is valid under the statute. As stated by the Court in *State, ex rel. v. Witter*, 110 Ohio St., 216, at 223, in referring to a somewhat similar question pertaining to former Sections 486-17 and 486-17a, General Code:

“The acts upon the part of the respondent as to the suspension do not meet the mandatory provisions of the statute, and the attempted suspension was illegal, void, and of no effect.”

While, as noted earlier, Section 143.27, *supra*, does not contain express mandatory provisions as to the duties of notifying the employee, and furnishing him a copy of the order, on or before the date of filing, such duties are necessarily implied to carry out the intent of the legislature to allow the employee a ten-day appeal period.

In view of my above conclusions, I do not deem it necessary to consider your fourth question.

In conclusion, it is my opinion and you are advised:

1. In removing a state employee pursuant to Section 143.27, Revised Code, the appointing authority must prepare an order of removal stating the reasons therefor, must file the order with the director of state personnel and with the state personnel board of review, and must furnish the employee with a copy of the order, and the employee must be furnished with said copy, and notified by the appointing authority of the date of the filing of the order, on or prior to the date on which the order is filed.

2. In removing an employee under section 143.27, the appointing authority must comply with all of the requirements noted in "1." above, and failure to meet any of said requirements would render the attempted removal invalid.

Respectfully,  
MARK McELROY  
Attorney General