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CIVIL SERVICE—EMPLOYEE, BUREAU OF UNEMPLOYMENT
COMPENSATION—DISCHARGE—ADMINISTRATOR—§§143.27,
4121.122 R.C.—CLASSIFIED SERVICE.

SYLLABUS:

Under the provisions of Section 4121.122, Revised Code, the Administrator of the Bureau of Workmen's Compensation may discharge any employee of the bureau for misfeasance, malfeasance, or nonfeasance; provided that, if such employee is in the classified service of the state of Ohio, such discharge should be done in accordance with the procedure contained in Section 143.27, Revised Code.

Columbus, Ohio, April 15, 1959

Hon. Leland S. Dougan, Chairman
Civil Service Commission of Ohio, Columbus, Ohio

Dear Sir:

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

“Revised Code Section 143.27, Tenure of Office; Removal was last amended and the effective date was *August 16, 1955*.

“Revised Code Section 4121.122 Power to Discipline employees became effective *October 5, 1955*.

“A request for an opinion is made at this time as to which one of these revised code sections control. Specifically, the Administrator of the Bureau of Workmen's Compensation has used Revised Section 4121.122 to discharge an employee. If this section as mentioned above became effective October 5, 1955, does it override Revised Code Section 143.27 as to the method of removal of an employee in the Bureau of Workmen's Compensation.”

Section 143.27, Revised Code, to which you refer, reads as follows:

“The tenure of every officer or employee in the classified service of the state and the counties, cities, 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; *but any such officer or employee may be removed 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 commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office.

“In all cases of removal, the appointing authority shall furnish such employee with a copy of the order of removal and his reasons for the same, and give such officer or employee a reasonable time in which to make and file an explanation. Such order with the explanation, if any, of the employee shall be filed with the commission. Any such employee so removed may appeal from the order of such appointing authority to the state civil service commission or the municipal civil service commission, as the case may be, within ten days after the date of such removal, in which event the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority, and the commission’s decision is final. In the case of the removal of a chief of police or a chief of the fire department or any member of the police or fire department of a city an appeal may be had from the decision of the municipal civil service commission to the court of common pleas of the county in which such city is situated to determine the sufficiency of the cause of removal. Such appeal shall be taken within ten days from the finding of the commission.” (Emphasis added)

Section 4121.122, Revised Code, to which you also refer, reads as follows :

“The administrator of the bureau of workmen’s compensation may discipline, suspend, demote or discharge any employee of the bureau of workmen’s compensation for misfeasance, malfeasance or nonfeasance. In the case of any deputy administrator, or of any employee assigned to the investigation or determination of claims, the finding of the administrator that such person is not efficient, impartial or judicious, if supported by any evidence and not promoted by personal, political, racial or religious discrimination shall be accepted as a fact justifying the action taken by the administrator.”

Your specific question asks whether Section 4121.122, *supra*, overrides Section 143.27, *supra*, as to the *method* of removal of an employee in the Bureau of Workmen’s Compensation. Thus, the instant question is whether said Section 4121.122 provides a different *procedure* for such a removal then is provided by said Section 143.27, and, if so, which section governs such removal.

Section 143.27, *supra*, provides a procedure to be followed in the discharge of any officer or employee in the classified service of the state,

including employees of the Bureau of Workmen's Compensation who are in the classified service. Section 4121.122, *supra*, gives the Administrator of the Bureau of Workmen's Compensation the power to discharge *any* employee of said bureau but does not provide any procedure to be followed in such a discharge. (You will note that, in considering this question, I am dealing with the discharge of employees who are in the classified service of the state.)

Both of the above-noted sections provide for the removal of employees for misfeasance, malfeasance, or nonfeasance in office. While Section 143.27, *supra*, lists incompetency, inefficiency, dishonesty, etc., as reasons for removal of an employee, all of these terms come within the definitions of "misfeasance, malfeasance, or nonfeasance," and the words "or any *other* acts of misfeasance, malfeasance, or nonfeasance" in said Section 143.27, indicate that such is the intention of that section.

In considering the first sentence of Section 4121.122, *supra*, alone, it might appear upon first impression that the Administrator of the Bureau of Workmen's Compensation has full authority to discharge an employee outright and that said employee would not have the right of appeal which is afforded under Section 143.27, *supra*. In this regard, it might be argued that the Legislature intended Section 4121.122, *supra*, to be an exception to the provisions of Section 143.27, *supra*. I believe, however, that the two sections are in *pari-materia* and should be read together to ascertain the procedure which should be followed in the discharge of an employee by the Administrator. I further believe that, in enacting the first sentence of said Section 4121.122, the Legislature intended only to designate what officer would have authority to discharge an employee of the Bureau of Workmen's Compensation and did not intend to change the actual procedure for discharge as provided by said Section 143.27.

Section 4121.122, *supra*, was enacted as a part of Amended Substitute House Bill Number 700, 101st General Assembly, effective October 5, 1955. This bill included the creation of the Bureau of Workmen's Compensation and the definition of the powers of the Administrator thereof, in addition to making other changes in the workmen's compensation law. Previous to October 5, 1955, the effective date of the bill, the workmen's compensation law was administered by the Industrial Commission. The Industrial Commission, however, was not abolished and still retains much of its former authority. To clarify the powers of the Administrator and

of the Commission, it was necessary to specifically designate the powers of each. Thus, the authority of the Administrator to discharge employees pursuant to Section 4121.122, *supra*, was provided, in my opinion, to specifically designate what officer could discharge employees pursuant to Section 143.27, *supra*, and not to provide a separate procedure for such discharge. Accordingly, it follows that although the Administrator may discharge an employee of the Bureau of Workmen's Compensation for misfeasance, malfeasance, or nonfeasance, such a discharge is subject to the procedure prescribed in Section 143.27, *supra*.

I believe that the second sentence of Section 4121.122, *supra*, further indicates the intention of the Legislature in this matter. This sentence reads as follows:

" * * In the case of any deputy administrator, or of any employee assigned to the investigation or determination of claims, the finding of the administrator that such person is not efficient, impartial or judicious, if supported by any evidence and not promoted by personal, political, racial or religious discrimination shall be accepted as a fact justifying the action taken by the administrator."* (Emphasis added)

You will note that the underlined language implies that action by the Administrator is reviewed by some reviewing agency. This, in my opinion, can only refer to the appeal and hearing procedures contained in said Section 143.27 and further indicates that the Legislature intended that discharges of employees by the Administrator should be subject to the provisions of Section 143.27.

Answering your specific question, therefore, it is my opinion and you are advised that, under the provisions of Section 4121.122, Revised Code, the Administrator of the Bureau of Workmen's Compensation may discharge any employee of the bureau for misfeasance, malfeasance and nonfeasance; provided that, if such employee is in the classified service of the state of Ohio, such discharge should be done in accordance with the procedure contained in Section 143.27, Revised Code.

Respectfully,

MARK McELROY

Attorney General