

2164

EMPLOYEE, DISTRICT CHILDREN'S HOME—POSITIONS IN CLASSIFIED SERVICE ABOLISHED—REORGANIZATION AS A COUNTY CHILDREN'S HOME—FORMER EMPLOYEES NOT ENTITLED TO POSITION IN REORGANIZED COUNTY HOME UNLESS TRANSFERRED UNDER §143.25 R.C.

SYLLABUS:

All positions in a district children's home are abolished as a result of one of the participating counties withdrawing (where there are only two counties involved) and its reorganization as a county children's home; and an employee in the classified civil service of such district home would not be entitled to hold a position in such reorganized county home unless transferred thereto as provided in Section 143.25, Revised Code.

Columbus, Ohio. May 26, 1958

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

Dear Sir:

I have your request for my opinion reading as follows:

"A question has arisen in regard to the right of an employee, in the classified civil service, of a district children's home to retain his position after one of the participating counties withdraws and the home becomes a county children's home.

"The facts are as follows:

"The Fairmont Children's Home was organized as a district children's home under the provisions of Section 5153.36 R. C. Stark and Columbiana were the participating counties. Section 5153.41 R. C. provides that the superintendent of a district children's home shall be in the unclassified service and all other employees shall be in the classified service.

"Columbiana County withdrew from participating in the Fairmont Children's Home. On October 28, 1957, the Stark County Commissioners purchased Columbiana County's share in the Fairmont Children's Home. Section 5153.12 R. C. provides that *all employees* of a county children's home shall be in the classified civil service.

"The Stark County Prosecutor, Norman J. Putman, issued an opinion on October 25, 1957 (copy attached) in which he stated '* * * and all of the positions of the District Home will be

abolished. * * *.' Some of the employees were retained and others notified that their services were terminated.

"Charles George, appointed April 1, 1934 and serving as an Attendant at \$300 per month, was notified in a letter dated November 8, 1957, and signed by R. E. Wood, Director 'that you are to be relieved of your duties as Attendant of Fairmont Home on and after November 29th.' A letter to this Commission dated November 27, 1957, and signed by Charles P. George protests the dismissal and requests an investigation.

"Your opinion is requested as to whether all positions in a district children's home are abolished as the result of one of the participating counties withdrawal from its operation and its reorganization as a county children's home or whether an employee in the classified civil service would be entitled to retain his position under such circumstances."

Upon the sale of the interest of Columbiana County to Stark County and there being only two counties involved, the Fairmont District Children's Home became the Stark County Children's Home. Such withdrawal by Columbiana County and sale is authorized by Section 5153.49, Revised Code, which read as follows :

"The board of county commissioners of any county within a children's home district may, upon the recommendation of the county child welfare board or of the county department of welfare, and subject to the approval of the department of welfare, withdraw from such district and dispose of its interest in such home by selling or leasing its right, title, and interest in the site, buildings, furniture, and equipment to any counties in the district, at such price and on such terms as are agreed upon among the boards of county commissioners of the counties concerned. Section 307.10 of the Revised Code does not apply to this section. The net proceeds of any such sale or lease shall be paid into the county treasury of the withdrawing county.

"Members of the board of trustees of a district children's home who are residents of a county withdrawing from such district are deemed to have resigned their positions upon completion of the withdrawal procedure provided by this section. Vacancies thus created shall be filled according to section 5153.05 or sections 5153.39 and 5153.45 of the Revised Code."

No provision is made in Section 5153.49, Revised Code, for the transfer of employees.

After the sale and transfer of the interest of Columbiana County, the former employer, namely, the Fairmont District Children's Home, went out of existence and there being no employer the positions existing in the district home were abolished.

Apparently no agreement or provision was made to transfer any employees of the district home to the county home, although this could have been done. See Opinion No. 2271, Opinions of the Attorney General for 1953, page 23.

Under the provisions of Sections 5153.02 and 5153.03, Revised Code, after the transfer of the home to Stark County, the institution would then come under the supervision of the county child welfare board or the county department of welfare if one existed in Stark County.

Section 5153.12, Revised Code, reads as follows:

“All employees of the county child welfare board or county department of welfare shall be in the classified civil service. In so far as practicable, all employees holding positions in the classified service, whose duties are transferred by this section to the board of department, shall be continued, with like status, by the appointing authority before any other appointments are made. Sections 5153.01 to 5153.42, inclusive, of the Revised Code shall not affect the civil service status of any employee.”

Section 143.25, Revised Code, states:

“With the consent of the commission, a person holding an office or position in the classified service may be transferred to a similar position in another office, department, or institution having the same pay and similar duties; but no transfer shall be made from an office or position in one class to an office or position in other class, nor shall a person be transferred to an office or position for original entrance to which there is required by sections 143.01 to 143.48, inclusive, of the Revised Code, or the rules adopted pursuant to such sections, an examination involving essential tests or qualifications or carrying a salary different from or higher than those required for original entrance to an office or position held by such person.

“Any person holding an office or position under the classified service who has been separated from the service without delinquency or misconduct on his part may, with the consent of the commission, be reinstated within one year from the date of such separation to a vacancy in the same or similar office or position in the same department; provided, if such separation is due to injury or physical disability, such person shall be reinstated to the same office or similar position he held at the time of his separation, within thirty days after written application for reinstatement and after passing a physical examination made by a licensed physician designated by the public employees retirement board, showing that he has recovered from such disability, provided further that such application for reinstatement be filed within five years

from the date of separation, and further provided that such application shall not be filed after the date of service eligibility retirement.

“Whenever any permanent office or position in the classified service is abolished or made unnecessary, the person holding such office or position shall be placed by the commission at the head of an appropriate eligible list, and for a period of not to exceed one year shall be certified to an appointing officer as in the case of original appointments.”

The new employer would arrange for the transfer of any employee desired in accordance with the foregoing section, or secure certification of the required employees from the Civil Service Commission. Employees not desired by the new employer where positions were abolished would be placed by the Civil Service Commission at the head of an appropriate eligible list as stated in Section 143.25, Revised Code.

Specifically answering your request contained in your letter, you are advised that all positions in a district children's home are abolished as a result of one of the participating counties withdrawing (where there are only two counties involved) and its reorganization as a county children's home; and an employee in the classified civil service of such district home would not be entitled to hold a position in such reorganized county home unless transferred thereto as provided in Section 143.25, Revised Code.

Respectfully,
WILLIAM SAXBE
Attorney General