

OPINION NO. 66-186**Syllabus:**

The Board of County Commissioners may not remove or suspend an employee of the County Welfare Department without the action having been initiated, or at least approved, by the County Welfare Director.

To: Earl W. Allison, Chairman, State Personnel Board of Review, Columbus, Ohio

By: William B. Saxbe, Attorney General, December 30, 1966

I am in receipt of your opinion request letter which states in pertinent part as follows:

"Dear Sir:

"In your Opinion No. 65-37 issued on March 23, 1965 to State Personnel Director Wayne Ward, you concluded that a county director of welfare must have the approval of the board of county commissioners before he can discharge or remove or suspend an employee of the welfare department.

"Would you please review this Opinion and advise the State Personnel Board of Review whether or not the converse is true, that is, can the board of county commissioners remove or suspend an employee of the county welfare department without the action having been initiated, or at least approved, by the county welfare director."

The conclusion reached in Opinion No. 65-37, Opinions of the Attorney General for 1965, insofar as it related to

Question No. 1, was based on the rationale employed in Opinion No. 6316, Opinions of the Attorney General for 1956, page 152. The question there presented was as follows:

"Our question is, does the County Welfare Director have the authority to abolish this position /Clerk Typist II/ without the approval of the County Commissioners."

In answering the propounded question in the negative, one of my predecessors, on page 157 stated in part as follows:

"Inasmuch as these provisions /All pertinent provisions of Chapter 329, Revised Code/ manifest an intention to vest the board of county commissioners with executive control over the department, it is my opinion that the approval of these appointments by the board should not now be considered as a legislative act, but should be construed as a partial exercise of the executive power of appointment. It is my further opinion that, by virtue of the provisions of Section 329.02, Revised Code, this power has been granted jointly to the director of the department and the board of county commissioners, and must be exercised accordingly.

"Such a construction will not only give effect to the language of Section 329.02, Revised Code, by which the director is expressly authorized to make certain appointments within the department, but it will also give effect to the manifest legislative intent that the county commissioners should exercise executive control over the department."

It may readily be seen from the immediately preceding quoted passages that the grant of power to appoint one to a position in the County Welfare Department is vested jointly in the Board of County Commissioners and the County Director of Welfare. Further, the second paragraph of the Syllabus of Opinion 6316, supra, held that the power to abolish a position in the classified civil service is co-existent with the power to create a position or make an appointment. It, therefore, logically follows that the power to remove or suspend an employee in the County Welfare Department is granted jointly to the County Welfare Director and the Board of County Commissioners.

In specific answer to your inquiry, therefore, it is my opinion and you are accordingly advised that the Board of County Commissioners may not remove or suspend an employee of the County Welfare Department without the action having been initiated, or at least approved, by the County Welfare Director.