

**OPINION 65-74****Syllabus:**

Pursuant to Section 143.10, Revised Code, the automatic salary adjustment provided for therein may be paid only to an employee who has completed ninety days of service by the first day of July in the position, office or employment in which he is serving on that date. Opinion No. 4230, Opinions of the Attorney General for 1954, page 468, approved and followed.

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**To: Wayne Ward, Director of State Personnel, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, April 29, 1965**

Your request for my opinion reads:

"Your opinion is respectfully requested on the interpretation of 143.10 (I) of the Revised Code, referring to the salary increases to be given employees on July 1 of each year. The relevant portion of this section reads as follows: 'Beginning July 1 following his employment, each employee who has completed at least ninety days of service in any position, office or employment and who is below the maximum salary step in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. On July 1 of each year thereafter, until the highest step in the pay range is reached, each employee shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade.'

"To implement this section I, as Director of State Personnel, issued Personnel Procedure Memo No. 7, a copy of which is enclosed.

"The general point of view taken in my interpretation of the law may be summarized as follows: A new employee in the State Service must work for at least 90 days in a particular 'position, office, or employment' before he is eligible for his first step increase. Further step increases would occur automatically on each succeeding July 1, so long as the employee's service is continuous, regardless of any change in the classification of his position or any change in rate of pay by means of promotion. In other words, I am taking the position that, except for the first step increase, increases based on promotion are independent of the automatic step increases provided in this section and neither one has any relationship to the other.

"Because of the large number of employees who are affected by step increases on July 1, an early opinion would be very much appreciated."

The Personnel Procedure Memo No. 7, as revised February 15, 1965, reads in part:

"2. An employee is entitled to his initial automatic salary adjustment or step increase on the first July 1st on which he has completed ninety or more days of State Service in active pay status in a particular position, office, or employment. For purposes of automatic salary adjustment, the phrase 'position, office, or employment,' means any specific employment or job calling for the performance of certain duties, and for the exercise of certain responsibilities by an individual. An employee will be considered to be in the same 'position, office or employment,' so long as:

"(a) His position has not been subject to a change in official classification title (established by Section 143.09A) resulting in an increase of salary for the employee, or,

"(b) His service has been under the same classification title, even though serving in a different position or work assignment.

"3. After the initial automatic salary adjustment has been made and so long as the course of employment is continuous the employee is entitled on each succeeding July 1st to an additional step increase until the maximum step established for his classification has been reached. There is no requirement of minimum service in active pay status

for salary adjustments after the first salary adjustment, nor is eligibility for the adjustment affected by any change in classification, promotion, or demotion."

Section 486-7b, General Code, the predecessor to Section 143.10, Revised Code, was amended in 124 Ohio Laws, 712, 741 to read in part as follows:

"9. \* \* \*Beginning July 1, 1951, each employee who has completed one year, or a major part thereof, in a particular position, office or employment and who is below step 5 in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. Each year thereafter, until the highest step in the pay range is reached, each employee shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. The first such adjustment shall become effective as of July 1, following completion of the first year's service, or major part thereof, and as of July 1 of each year thereafter until the maximum salary or wage in the pay range is reached.\* \* \*"

Section 143.10, Revised Code, was amended by the General Assembly in the next regular session; see 125 Ohio Laws, 546, 574. This amendment, which became effective October 23, 1953, provided in part:

"\* \* \*Beginning July 1 following his employment, each employee who has completed at least ninety days of service in any position, office or employment and who is below the maximum salary step in the pay range to which his position, office or employment is assigned, shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade. On July 1 of each year thereafter, until the highest step in the pay range is reached, each employee shall receive an automatic salary adjustment equivalent to the next higher step within the pay range for his class or grade.\* \* \*"

After this amendment became effective, the chairman of the Civil Service Commission requested an opinion on a question substantially similar to the one you have asked. In Opinion No. 4230, Opinions of the Attorney General for 1954, page 468, my predecessor expressed this conclusion, as shown by the syllabus:

"Under the provisions of Section 143.10 (I), Revised Code, as amended by House Bill No. 484 of the 100th General Assembly, 125 O. L. 546, 574, employees who have been reassigned, promoted or demoted within ninety days prior to July 1 are

ineligible for the automatic salary increase provided by said section."

I am in agreement with that interpretation of the 1953 amendment to Section 143.10, Revised Code, and with the following reasoning which appears on page 469:

"It is my opinion that this change which eliminated the use of the word 'particular' did not change the law from its meaning prior to its amendment. While it is true that the word 'particular' has a significant meaning, the words which give real emphasis to the provision in question are 'ninety days of service in \* \* \* position, office or employment.' Those words, in my opinion, spell out the legislative intent that the automatic increase shall be awarded to employees who have been performing the same job for a certain period of time without promotion or reclassification; and the substitution of 'any' for 'a particular' cannot change their effect."

Section 143.10, supra, has been amended since the date of that opinion, but I find no change in the language considered here. It is my conclusion that this section requires that an employee must have served the ninety-day period in one definite, assigned position, office or employment in order that he may receive the statutory automatic increase on the first day of July of any year. I find nothing which I could interpret as providing for a salary increase for every employee who has been employed by the state for ninety days and who has not attained the highest step in his current pay range, regardless of promotions or reassignments.

It is, therefore, my opinion and you are advised that pursuant to Section 143.10, Revised Code, the automatic salary adjustment provided for therein may be paid only to an employee who has completed ninety days of service by the first day of July in the position, office or employment in which he is serving on that date. Opinion No. 4230, Opinions of the Attorney General for 1954, page 468, approved and followed.