

130

WELFARE DEPARTMENT, COUNTY, DIRECTOR OF—MAY MAKE APPOINTMENTS OF EMPLOYES WITH APPROVAL OF COUNTY COMMISSIONERS—DIRECTOR MAY MAKE REDUCTION, DISMISSAL OR LAY-OFF OF SUCH APPOINTEES, WHEN HE DEEMS IT NECESSARY, WITHOUT APPROVAL OF COUNTY COMMISSIONERS—SECTION 2511-1 ET SEQ., G. C.

SYLLABUS:

The director of a county welfare department, organized pursuant to Section 2511-1 et seq. of the General Code, may make appointments of employes in such department with the approval of the county commissioners, but such director may make a reduction, dismissal or lay-off of any such appointees when he deems it necessary in the proper administration of said department, without the approval of the county commissioners.

Columbus, Ohio, February 17, 1945

Miss Gertrude Jones, Chairman, The State Civil Service Commission of
Ohio
Columbus, Ohio

Dear Miss Jones:

I have before me your letter requesting my opinion, reading as follows:

“The following question has been presented to this Commission upon which we respectfully request your opinion:

On January 1, 1944, House Bill No. 140 became effective. This Bill codifies Sections 2511-1 to 11, respectively. Section 2 of the above mentioned statute provides that, ‘the director with the approval of the board of commissioners shall appoint all necessary assistants,’ etc.

However, since the act is silent regarding the manner of lay-offs, reductions or dismissals, the county commissioners of Trumbull County contend the reverse is true in regard to dismissals and that the director of a public welfare department has no power to effect dismissals, lay-offs or reductions without the approval of the board of commissioners.

The question upon which we desire your opinion is:

Does the director of a county welfare department established under the provisions of Section 2511-1-2 have the power to make an appointment, reduction, dismissal or lay-off without the approval of the board of county commissioners?”

Sections 2511-1 to 2511-11 of the General Code, as enacted by the 95th General Assembly, provide for the establishment by the county commissioners of a county department of welfare, which when established is to be governed by the provisions of the act.

Section 2511-1, General Code, reads in part as follows:

“* * * The county department of welfare *shall consist* of a county director of welfare appointed by the board of county commissioners, and such assistants and other employees as may be deemed necessary for the efficient performance of the welfare service of the county. * * * The county director of welfare may

require any *assistant or employee under his jurisdiction* to give a bond in such sum as may be determined by the county commissioners. * * *

(Emphasis added.)

The use of the words "shall consist of," in connection with what follows, seems to me to have significance, and this provision, taken in connection with other provisions of the act, would appear to give the county director complete executive authority in the management of the department.

Section 2511-2, General Code, outlines the powers and duties of the director. That section reads as follows:

"Under the direction of the board of county commissioners, the county director of welfare shall have full charge and control of the county department of welfare. He shall prepare the annual budget estimate of the department and submit it to the board of county commissioners. Before submitting the budget estimate to the county commissioners, the county director of welfare shall consider the recommendations of the welfare advisory board relative thereto, if there be such a board in the county. The director with the approval of the board of county commissioners, shall appoint all necessary assistants, superintendents of institutions, if any, under the jurisdiction of the department, and all other employes of the department, excepting that the superintendent of each such institution shall appoint all employes therein. The assistants and other employes of the county department of welfare shall be in the classified civil service, and may not be placed in or removed to the unclassified service. The county director of welfare and such assistants and other employes under civil service must be residents of the county in which they are appointed at the time of such appointment. If no eligible list is available, provisional appointments shall be made until such eligible list is available.

The county commissioners, except as provided in this act, may provide by resolution for the coordination of the operations of the county department of welfare and those of any county institution whose board or managing officer is appointed by them."

It will be noted that the broad powers which are given to the director are to be exercised "under the direction of the board of county commissioners." In my opinion, however, this language does not indicate an intention on the part of the legislature to give the county commissioners any executive authority in the management of the department, but rather

to give them a status somewhat like that of a city council, whose duties are specifically described in the statute as being legislative only, coupled with the obligation to pass ordinances regulating the various departments and to provide funds for their operation.

It will be further noted that the *director* is given the *power to "appoint* all necessary assistants, superintendents of institutions, if any, under the jurisdiction of the department, and all other employees of the department, excepting that the superintendent of each such institution shall appoint all employes therein." The authority to make these appointments is explicitly placed in the director and not in the commissioners. The fact that their approval of his appointments is required does not make the commissioners in any sense the appointing officers.

It is said in 42 Am. Juris. p. 963:

"A confirmation of an appointment to a public office is to be distinguished from the appointment itself, for in confirming the appointment the senate or other body does not in any sense choose the appointee. The act of confirming an appointment to office is not the exercise of an executive function. * * *"

The power to appoint ordinarily carries with it the power to remove an appointee, subject of course to restrictions that may be imposed by the law. In 32 O. Jur. p. 1061, it is said:

"In the absence of a provision of law that an appointee shall not be removed except for cause or specified causes, or that he shall hold his position for a definite and fixed time, or that the power of removal has been given to some other authority, the appointing power has, by implication of law, the right of removal."

Citing *State ex rel. v. Claypool*, 13 O. S. 14; *Warwick v. State*, 25 O. S. 21; *Mahoning Co. v. Palkovic*, 12 O. L. Abs. 280.

Since the statute above quoted provides that the assistants and other employes of the county department of welfare are to be in the classified civil service, we may look to the provisions of the civil service law relative to suspensions or lay-off of employes.

Section 486-17, General Code, reads in part as follows:

"No person shall be reduced in pay or position, laid off, suspended, discharged or otherwise discriminated against *by an ap-*

pointing officer for religious or political reasons or affiliations. * * * In all such cases of reduction, lay-off or suspension of an employe or subordinate, whether appointed for a definite term or otherwise, *the appointing authority* shall furnish such employe or subordinate with a copy of the order of lay-off, reduction or suspension and his reasons for the same, and give such employe or subordinate a reasonable time in which to make and file an explanation. Such order together with the explanation, if any, of the subordinate shall be filed with the commission. * * * Nothing in this act contained shall limit *the power of an appointing officer to suspend* without pay, for purposes of discipline, an employe or subordinate for a reasonable period, not exceeding thirty days, excepting that in the case of the chief of police or chief of a fire department or any member of police or fire departments of a municipality, the suspension shall be made in the manner and subject to the right of appeal as herein provided; provided, however, that successive suspensions shall not be allowed, and provided further that the provisions of this section shall not apply to temporary and exceptional appointments made under the authority of section 486-14 of the General Code."

(Emphasis added.)

While this section does not in affirmative words confer upon the head of a department the power to suspend or lay off an employe, it is manifest that that power is assumed, and inasmuch as the director of the department of welfare is the one who is given the power to appoint, it seems clear that he, and he alone, is the one who has the power to lay off or suspend an employe appointed by him.

In specific answer to your inquiry, it is my opinion that the director of a county welfare department, organized pursuant to Section 2511-1 et seq. of the General Code, may make appointments of employes in such department with the approval of the county commissioners, but that such director may make a reduction, dismissal or lay-off of any such appointees when he deems it necessary in the proper administration of said department, without the approval of the county commissioners.

Respectfully,

HUGH S. JENKINS

Attorney General