

November 16, 2017

The Honorable D. Andrew Wilson
Clark County Prosecuting Attorney
50 East Columbia Street, Suite 449
Springfield, Ohio 45502

SYLLABUS:

2017-041

1. R.C. 3709.13 places a general health district employee within the general civil service framework of R.C. Chapter 124. (1980 Op. Att’y Gen. No. 80-087, approved and followed; 1955 Op. Att’y Gen. No. 5699, p. 434, syllabus paragraph 1, overruled on the basis of legislative amendment).
2. A general health district employee, other than the health commissioner, is in the classified civil service absent a provision in R.C. 124.11(A) that places the employee in the unclassified civil service.
3. Pursuant to R.C. 124.11(A)(28), a general health district employee that performs functions and duties of a deputy or assistant authorized to act for or in place of the health commissioner, or that holds a fiduciary relation to the health commissioner, is in the unclassified civil service.



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OPINION NO. 2017-041

The Honorable D. Andrew Wilson
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50 East Columbia Street, Suite 449
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Dear Prosecutor Wilson:

You have requested an opinion addressing the following question: Are all employees of a general health district, other than the health commissioner, classified employees under R.C. 3709.13, or are deputies and assistants that are authorized to act for or in place of the health commissioner, or holding a fiduciary relationship to the health commissioner, unclassified employees under R.C. 124.11(A)(28)?

General Health Districts

Provisions establishing the powers and duties of health districts and boards of health appear in R.C. Chapters 3707 and 3709. R.C. 3709.01 declares that the state shall be divided into health districts. Each city constitutes a city health district and the townships and villages in each county shall be combined and known as a general health district. *Id.* The statute also authorizes the union of a general health district and one or more city health districts located within or partially within such general health district. When such a union is completed, the district is known as a general health district. *Id.*; *see also* R.C. 3709.10 (union of general health districts and manner of electing of a board of health for the combined district). You have informed us that a combined general health district has been formed in Clark County pursuant to R.C. 3709.07, consisting of the City of Springfield city health district and the Clark County general health district.

A general health district is served by a board of health, R.C. 3709.02(A), a district advisory council, R.C. 3709.03(A), and a health district licensing council, R.C. 3709.41(A). The power to appoint general health district employees is granted to the board of health by R.C. 3709.13:

In any general health district the board of health may, upon the recommendation of the health commissioner, appoint for full or part time service a public health nurse and a clerk and such additional public health nurses, physicians, and other persons as are necessary for the proper conduct of its work. Such number of public health nurses may be employed as is necessary to provide adequate public health nursing service to all parts of the district. *Employees of the board, other than*

the commissioner, shall be in the classified service of the state, and all employees of the board may be removed for cause by a majority of the board. (Emphasis added.)

R.C. 3709.15 also authorizes the board of health of a general health district to appoint sanitarians and nurses. Under R.C. 3709.16, the board of health of a general health district “shall determine the duties and fix the salaries of its employees.” *See also Franklin v. Gallia Cnty. Health Comm’r*, No. 99AP-216, 2000 Ohio App. LEXIS 1245 (Franklin County March 28, 2000) (finding that R.C. 3709.16 authorized the Gallia County Board of Health to determine the duties and job classifications of the general health district’s employees). R.C. 3709.13 and R.C. 3709.15 authorize the board of health of a general health district to appoint employees in order to accomplish the duties of the general health district. *See also* 1995 Op. Att’y Gen. No. 95-030, at 2-150 (“[t]he board of health is vested with broad general authority to provide for the health needs of the district”). The health commissioner serves as the principal executive officer of a general health district. R.C. 3709.11 provides, in pertinent part:

The board [of health of the general health district] shall appoint a health commissioner The [health] commissioner shall be the executive officer of the board [of health of the general health district] and shall carry out all orders of the board and of the department of health.

In deciding whether the language of R.C. 124.11(A)(28) is applicable to a general health district employee’s civil service classification and how it affects R.C. 3709.13, we first review the general structure of Ohio’s civil service system for public employees, which appears in R.C. Chapter 124.

The Civil Service System in R.C. Chapter 124

In R.C. 124.01, the General Assembly has enacted definitions that apply to provisions throughout R.C. Chapter 124. 2014 Op. Att’y Gen. No. 2014-038, at 2-341. R.C. 124.01(A) defines the “civil service” for purposes of R.C. Chapter 124 as “all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, *general health districts*, and city school districts of the state.” (Emphasis added.) R.C. 124.01(B) defines “state service” for purposes of R.C. Chapter 124, as “all offices and positions in the service of the state and the counties and *general health districts* of the state.” (Emphasis added.) R.C. 124.01(C) defines “classified service” for purposes of R.C. Chapter 124, as “the competitive classified civil service of the state, the several counties, cities, city health districts, *general health districts*, and city school districts of the state, and civil service townships.” (Emphasis added.) When R.C. 124.01 names and includes a general health district as a political subdivision¹ separate from the state, employees of a general health district qualify under the provisions of state law relating to civil service set forth in R.C. Chapter 124. The specific references to general health districts in the definitional

¹ General health districts are political subdivisions of the state, not state agencies. *See generally* 1975 Op. Att’y Gen. No. 75-036, at 2-143.

statutes of R.C. 124.01(A), R.C. 124.01(B), and R.C. 124.01(C) mean that employees of a general health district are included in the general civil service framework of R.C. Chapter 124.

R.C. 124.11 further divides civil service positions into the “unclassified service” and “classified service.” Individuals in the classified service attain their positions through a merit system based primarily on competitive examination as provided in R.C. 124.23, and are afforded procedural protections from arbitrary removal by R.C. 124.34. 1991 Op. Att’y Gen. No. 91-011, at 2-58. “[I]ndividuals in the unclassified service are employed at the discretion of an appointing authority, and are not provided the same procedural safeguards afforded to individuals in the classified service.” *Id*; see also *State ex rel. Hunter v. Summit Cnty. Human Res. Comm’n*, 81 Ohio St. 3d 450, 453, 692 N.E.2d 185 (1998) (“[a]n unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority”). R.C. 124.11(A)(1)-(32) enumerate those positions that are included in the unclassified civil service. R.C. 124.11(B) further states that the “classified service shall comprise all persons in the employ of the ... general health districts,... *not specifically included in the unclassified service.*” (Emphasis added.) Hence, a position is in the classified civil service if it is not included in the unclassified civil service pursuant to R.C. 124.11(A)(1)-(32).

Construing the Statutory Provisions of R.C. 3709.13 and R.C. 124.11(A)(28) to Give Full Force and Effect to Both Provisions

We now turn to your specific inquiry, whether all employees of a general health district, other than the health commissioner, are classified employees under R.C. 3709.13, or whether deputies and assistants that are authorized to act for or in place of the health commissioner, or holding a fiduciary relation to the health commissioner, are unclassified employees under R.C. 124.11(A)(28). R.C. 3709.13, states, in pertinent part that “[e]mployees of the board [of health of a general health district], other than the [health] commissioner, shall be in the classified service of the state[.]” R.C. 124.11(A)(28) declares, in pertinent part:

The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

....

For cities, counties, civil service townships, city health districts, general health districts, and city school districts, the deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation² to their principals[.]³ (Footnotes added.)

² A “fiduciary relationship” generally means

a relationship where the appointing authority reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be

In reconciling R.C. 3709.13 and R.C. 124.11(A)(28), we are guided by the principle that “[statutes] deal[ing] with the same subject-matter, are *in pari materia*, and therefore must be construed together, each given such reasonable construction as to give the proper force and effect to each and all of said statutes.” *Maxfield v. Brooks*, 110 Ohio St. 566, 144 N.E. 725 (1924) (syllabus, paragraph 1); *see also State ex rel. Celebrezze v. Allen Cnty. Bd. of Comm’rs*, 32 Ohio St. 3d 24, 27-28, 512 N.E.2d 332 (1987) (“[w]hile the *in pari materia* rule of construction is an acknowledged aid in the interpretation of statutes, its use is limited to those situations where some doubt or ambiguity exists in the wording of a statute”). With this principle in mind, we apply the same analysis as in 1980 Op. Att’y Gen. No. 80-087 and followed in 2014 Op. Att’y Gen. No. 2014-038.⁴ In 1980 Op. Att’y Gen. No. 80-087, at 2-341, the Attorney General concluded that “[t]he provision in R.C. 3709.13 stating that general health district employees are in ‘the classified service of the state’ merely places such employees within the general civil service framework of R.C. Chapter 124[.]” This means that R.C.

delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.

2B Ohio Admin. Code 124-1-02(I) (2016-2017 Supplement). Whether a relationship is fiduciary in nature is a “[question of fact], not of title, and can only be answered by examination of the duties assigned to and performed by [the named position].” *Yarosh v. Jurich*, No. 2611, 1979 Ohio App. LEXIS 10266, at *6 (Trumbull County Apr. 30, 1979).

³ “Principal” is not defined in R.C. Chapter 124. When a term is not statutorily defined, R.C. 1.42 directs that “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” *Merriam-Webster’s Collegiate Dictionary* 987 (11th ed. 2005) defines “principal” as “a person who has controlling authority or is in a leading position[.]” The principal executive officer of a general health district is the health commissioner.

⁴ 2014 Op. Att’y Gen. No. 2014-038 considered R.C. 3709.13’s effect on the determination of whether an employee of a general health district is in the classified service of the state when applying R.C. 124.57(A). Following the reasoning set forth in 1980 Op. Att’y Gen. No. 80-087, the opinion concluded that

R.C. 3709.13 subjects general health districts to applicable provisions of the civil service laws of R.C. Chapter 124, while R.C. 124.01(K) clarifies that employees of a board of health of a general health district are not employees of the state, for purposes of R.C. Chapter 124, and are not in the “service of the state” as that term is used in R.C. Chapter 124, including its use in R.C. 124.57.

2014 Op. Att’y Gen. No. 2014-038, at 2-345.

3709.13 identifies general health district employees as part of the civil service system.⁵ *Id.*, at 2-343 (stating that “the legislature merely intended to indicate that general health district employees are within the civil service scheme of R.C. Chapter 124” by its use of language in R.C. 3709.13). The Attorney General further explained that when dealing in the context of the civil service classification of general health district employees, “[t]he more specific provisions of R.C. Chapter 124 govern the precise nature of the public employment of general health district employees.” 1980 Op. Att’y Gen. No. 80-087, at 2-341. Thus, whether a general health district employee is in the unclassified or classified civil service does not end with R.C. 3709.13. We must also consider whether any of the provisions of R.C. 124.11(A) are applicable to a general health district employee. *See* R.C. 124.11(A)(1)-(32). Thus, a general health district employee, other than the health commissioner, is in the classified civil service absent a provision in R.C. 124.11(A) that places the employee in the unclassified civil service.

In the event that one or more of the provisions of R.C. 124.11(A)(1)-(32) applies, a particular general health district employee will be in the unclassified civil service. R.C. 124.11(A)(28) explicitly includes “general health districts” as political subdivisions to which the provision applies. Accordingly, R.C. 124.11(A)(28) applies to general health district employees. R.C. 124.11(A)(28) further declares that employees of a general health district that are deputies and assistants of an elective or principal executive officer who are authorized to act for and in the place of their principals or that hold a fiduciary relation to their principals, are in the unclassified civil service. Hence, pursuant to R.C. 124.11(A)(28), a general health district employee that performs functions and duties of a deputy or assistant and who is authorized to act for or in place of the health commissioner, or that

⁵ General health districts have not always been included within the civil service system. In 1919, the General Assembly enacted the Hughes Act, 108 Ohio Laws, Part 1, 236, 242, 248 (H.B. 211, eff. May 12, 1919), provisions of which placed health district employees under the civil service system. Then, in 1920, the Griswold Act, 108 Ohio Laws, Part 2, 1085, 1085-1093 (H.B. 633, eff. January 2, 1920) amended the Hughes Act, omitting all language with reference to the civil service system for general health districts. The later act thus excluded general health district employees from the operation of the civil service requirements. *See State ex rel. Mowrer v. Underwood*, 137 Ohio St. 1, 10, 27 N.E.2d 773 (1940); *see, e.g.*, 1955 Op. Att’y Gen. No. 5699, p.434, at 439. In 1967, the General Assembly enacted Am. Sub. S.B. 271 amending R.C. 3709.13 to include language that employees of a general health district were classified employees in the civil service of the state. *See* 1967-1968 Ohio Laws, Part I, 1219, 1219 (Am. Sub. S.B. 271, eff. Dec. 13, 1967); 1967-1968 Ohio Laws, Part II-III, 2255, 2256 (Am. Sub. S.B. 271, eff. Dec. 13, 1967). With these statutory changes, the advice in 1955 Op. Att’y Gen. No. 5699, p. 434 (syllabus paragraph 1) concluding that employees of a general health district are not in the classified civil service is no longer valid. Accordingly, we overrule syllabus paragraph 1 of 1955 Op. Att’y Gen. No. 5699, p. 434, on the basis of legislative amendment.

holds a fiduciary relation to the health commissioner, is in the unclassified civil service. Likewise, if none of the provisions of R.C. 124.11(A) apply, the general health district employee is in the classified civil service pursuant to R.C. 124.11(B).

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. R.C. 3709.13 places a general health district employee within the general civil service framework of R.C. Chapter 124. (1980 Op. Att’y Gen. No. 80-087, approved and followed; 1955 Op. Att’y Gen. No. 5699, p. 434, syllabus paragraph 1, overruled on the basis of legislative amendment).
2. A general health district employee, other than the health commissioner, is in the classified civil service absent a provision in R.C. 124.11(A) that places the employee in the unclassified civil service.
3. Pursuant to R.C. 124.11(A)(28), a general health district employee that performs functions and duties of a deputy or assistant authorized to act for or in place of the health commissioner, or that holds a fiduciary relation to the health commissioner, is in the unclassified civil service.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General