

**OPINION 65-79****Syllabus:**

1. Employees of a state university who are paid out of a state university rotary fund are public employees within the meaning of Chapter 145, Revised Code, but they are not eligible for membership in the public employees retirement system if the board of trustees or other managing body of the university has agreed by formal resolution to accept all requirements and obligations imposed by Sections 3309.01 to 3309.68, inclusive of the Revised Code, relating to the public school employees retirement system.

2. Employment in the service of a State university is State service within the meaning of Chapter 143, Revised Code.

3. Employees who work at institutions of higher education of the State of Ohio who are not specifically designated in Section 143.08 (A) (7) as comprising the unclassified service, are included in the classified civil service.

4. Employees of a state institution such as a State university or college who are included in the classified civil service should have their compensation determined by the classifications established in Section 143.09 (A) Revised Code, and the pay range assignments of Section 143.10, Revised Code.

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**To: Wayne Ward, Director of State Personnel, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, May 12, 1965**

Your request for my opinion reads as follows:

"I am seeking your opinion to assist us in determining the status of a rather large group of employees. The employees in question work at institutions of higher education of the State of Ohio. They are not paid from State appropriated funds but from what are customarily known as local rotary funds. These funds are not deposited with the Treasurer of State and the employees' warrants are not written by the Auditor of State. It is my understanding that the employees of a particular facility (for example, a university dormitory) are, in some instances, paid from the revenue arising from the operation of the facility. There are approximately 10,000 employees at the various State universities who are paid in this manner.

"My questions are as follows:

"1. Are such employees 'public employees,'

within the meaning of Chapter 145 of the Revised Code?

"2. If they are 'public employees,' are they included in the State Service as defined in Chapter 143 of the Revised Code?

"3. If they are in the State Service, are they included in the Classified Civil Service?

"4. If they are in the State Service, is their compensation to be determined by the Classification Plan established in Section 143.09 A of the Revised Code."

As to your first question, Section 145.03, Revised Code, provides as follows:

"A public employees retirement system is hereby created for the employees of the state and of the several local authorities mentioned in Section 145.01, Revised Code. Membership in the system shall be compulsory and shall consist of all public employees upon being appointed.  
\* \* \*"

Subdivision (A), Section 145.01, Revised Code, defines a public employee in the following terms:

"(A) 'Public employee' means any person holding an office, not elective, under the state or any county, municipal corporation, park district, conservancy district, sanitary district, health district, township, metropolitan housing authority, state retirement board, public library, county law library, union cemetery, joint hospital, institutional commissary, state university rotary fund, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division, or employed and paid in whole or in part by the state or any of the authorities named in this division in any capacity not covered by section 3307.01 or 3309.01 of the Revised Code."

(Emphasis added)

"Public employee" is also defined in this subdivision to mean any person who performs or has performed services under the direction of an employer, as defined in subdivision (D) of Section 145.01, Revised Code, and we find therein that "state university" is included within such meaning of "employer."

Section 3307.01, Revised Code, provides for the membership of teachers and faculty members of schools or colleges

in the State Teachers Retirement System. For the purposes of this opinion I will assume your questions do not apply to teachers or faculty members of the institutions of higher education to which you refer.

Section 3309.01 (B), Revised Code, defines "employee" as follows:

"(B) 'Employee' means any person employed in the public schools of the state in a position for which he is not required to have a certificate issued pursuant to sections 3319.22 to 3319.31, inclusive, of the Revised Code; and any person, not a faculty member, employed in any school or college or other institution wholly controlled and managed, and wholly or partly supported by the state or any subdivision thereof, the board of trustees or other managing body of which shall accept the requirements and obligations of Chapter 3309. of the Revised Code. In all cases of doubt the school employees retirement board shall determine whether any person is an employee, as defined in this division, and its decision is final."

Section 3309.23, Revised Code, states as follows:

"The membership of the school employees retirement system shall consist of:

"\* \* \* \* \*"

"(C) The employees in any school, college, or other institution supported in whole or in part by the state or any subdivision thereof and wholly controlled and managed by the state or any subdivision thereof shall become members on the same terms and conditions as the employees in the public schools, provided the board of trustees or other managing body of such school, college, or other institutions, if such institution is now in existence or if in existence on said date, (September 1, 1937), shall agree by formal resolution to accept all the requirements and obligations imposed by sections 3309.01 to 3309.68, inclusive of the Revised Code, upon employers of members. \* \* \*"

Thus by statutory definition it appears that the employees of the category you describe, whether they be employees under a state university rotary fund or employed by a state university would be public employees within the meaning of Chapter 145, Revised Code, were it not for their employment in a capacity covered by Section 3309.01, Revised Code, when the board of trustees or other managing body of which has accepted the requirements and obligations of Sections 3309.01 to 3309.68, inclusive of the Revised Code.

I am of the opinion that the language of Chapter 3309, Revised Code, is sufficiently inclusive to cover these employees provided the board of trustees or other managing

body accepts the requirements and obligations of Chapter 3309, Revised Code. If the trustees do not accept such requirements, then the exception as to the capacity in which these persons are employed no longer applies, and the provisions of Chapter 145, Revised Code, come into play. In the case of employees under a state university rotary fund there is specific indication of this alternative membership.

Your second question inquires whether, if such employees are "public employees", they are included in the State Service as defined in Chapter 143, Revised Code.

Section 143.01, Revised Code, reads as follows:

"As used in Sections 143.01 to 143.48, inclusive of the Revised Code:

"(A) 'Civil Service' includes all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts and city school districts thereof.

"(B) 'State Service' includes all such offices and positions in the service of the state, or the counties thereof, except the cities, city health districts and city school districts.

"\* \* \* \* \*"

Thus it is apparent that all offices and positions of trust or employment in the service of the state may be designated as "state service".

Chapter 3345, Revised Code, dealing with State Universities specifically includes the Ohio State University, Miami University, Ohio University, Kent State University, Bowling Green State University, Central State College, Cleveland State University and Toledo State College of Medicine, within the scope of State Universities of Ohio. As far back as 1876, the Agricultural and Mechanical College in Ohio, which was the original designation of the Ohio State University (Section 3335.01, Revised Code), was declared to be a state institution, designed and well calculated to promote public educational interests, established for the people of the whole state, to be managed and controlled by such agencies as the legislature in its wisdom may provide. See Neil v. Board of Trustees of the Ohio Agricultural and Mechanical College, and Jonas E. Rudisill, 31 Ohio St. 15, 21.

It is therefore my opinion that employment in the service of a State University is State service within the meaning of Chapter 143, Revised Code.

Your third question asks whether such employees are included in the Classified Civil Service.

Section 143.08, Revised Code, provides that the civil service of the state and the several counties, cities, city health districts, and city school districts thereof shall be divided into the unclassified service and the classified ser-

vice. Included in the unclassified service under subdivision (A) (7) of Section 143.08, Revised Code, are:

"All presidents, business managers, administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers, and such employees as are engaged in educational or research duties connected with the public school system, colleges, and universities, as determined by the governing body of said public school system, colleges, and universities; \* \* \*"

Division (B) of Section 143.08, Revised Code, states that the classified service shall comprise all persons in the employ of the state and the several counties, cities, etc., not specifically included in the unclassified service.

Accordingly it is my opinion that such employees who work at institutions of higher education of the State of Ohio who are not specifically designated in Section 143.08, (A) (7) Revised Code, as comprising the unclassified service, are included in the classified civil service.

The final question relates to whether the compensation of these employees is to be determined by the Classification Plan established in Section 143.09 (A), Revised Code. This section reads in part as follows:

"All positions, offices and employments paid in whole or in part by this state or paid out of any rotary fund of any state department, or state institution, except those excluded in Sections 143.09 and 143.10 of the Revised Code, are classified hereby and assigned hereby to the pay ranges established in Section 143.10, Revised Code, as follows:

"\* \* \* \* \* \* \* \*"

(Emphasis added)

The exceptions mentioned in Section 143.10, Revised Code, are applicable to part time employees, employees paid on an hourly basis, employees appointed from a position in the unclassified service to the classified service, and other matters which may apply in individual situations.

It is my opinion and you are hereby advised:

1. Employees of a state university who are paid out of a state university rotary fund are public employees within the meaning of Chapter 145, Revised Code, but they are not eligible for membership in the public employees retirement system if the board of trustees or other managing body of the university has agreed by formal resolution to accept all requirements and obligations imposed by Sections 3309.01 to 3309.68, inclusive of the Revised Code, relating to the public school employees retirement system.

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