

3334

EMPLOYEES OF THE OHIO TURNPIKE COMMISSION ARE NOT ENTITLED TO APPEAL A TERMINATION OF EMPLOYMENT TO THE STATE PERSONNEL BOARD OF REVIEW. §§143.012, 143.01 (B), 143.01, 143.08, 5537.04, R.C., OPINION 182, OAG, 1939.

SYLLABUS:

Employees of the Ohio turnpike commission are not "employees in the classified state service" within the meaning of Section 143.012, Revised Code, and are not entitled to appeal a termination of employment to the state personnel board of review under authority of that section.

Columbus, Ohio, October 11, 1962

Hon. Minor C. Kershner, Chairman, State Personnel Board of Review
Room 102, State Office Building, Columbus 15, Ohio

Dear Sir:

I have your request for my opinion on the question whether an employee of the Ohio turnpike commission is an "employee in the classified state service" within the meaning of Section 143.012, Revised Code, so as to entitle him to appeal a termination of his employment to the state personnel board of review.

Section 143.012, Revised Code, sets out the powers and duties of the state personnel board of review and in the part here pertinent provides:

“The state personnel board of review shall * * *

“(A) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of state personnel relative to reduction in pay or position, layoff, suspension, discharge, assignment or re-assignment to a new or different position classification; the board may affirm, disaffirm, or modify the decisions of the appointing authorities or the director of state personnel, as the case may be and its decision is final;

“* * * * * * * * *”

In order, then for appeal to lie to the state personnel board of review, the terminated employee must have been in “state service” which, for the purposes of Chapter 143., Revised Code, is defined in division (B) of Section 143.01, Revised Code, as follows:

“‘State service’ includes all such offices and positions in the service of the state, or the counties thereof, except the cities and city school districts.”

This definition is, by virtue of the use of the phrase “such offices and positions”, limited by the definition of “civil service” contained in Section 143.01 (A), Revised Code, and reading:

“(A) ‘Civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities, and city school districts thereof.”

Section 143.08, Revised Code, also of interest in the present question, reads, in part, as follows:

“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 service.”

“* * * * * * * * *”

Statutory provisions pertaining to the turnpike commission are contained in Chapter 5537., Revised Code. From this chapter certain conclusions as to the commission’s character may be drawn. It has power to regulate its own affairs (Section 5537.04 (A), Revised Code). It may sue and be sued in its own name and is not invested with sovereign

immunity (Sections 5537.02 and 5537.04 (D), Revised Code). It may acquire, hold and dispose of real property (Section 5537.04 (H), Revised Code). It may enter into contracts (Section 5539.04 (K), Revised Code). It may fix and collect turnpike tolls (Section 5537.04 (G), Revised Code). It may issue bonds without complying with the usually applicable laws, but such bonds are not a debt of the state (Sections 5537.09, 5537.10, and 5537.11, Revised Code). Under division (L) of Section 5537.04, Revised Code, it has power to:

“Employ consulting engineers, superintendents, managers, and such other engineers, construction and accounting experts, attorneys, and other employees and agents as are necessary in its judgment and to fix their compensation, provided all such expenses shall be payable solely from the proceeds of turnpike revenue bonds issued under sections 5537.01 to 5537.23, inclusive, of the Revised Code, or from revenues;”

Finally, Section 5537.02, Revised Code, provides that the commission “* * * is a body both corporate and politic in this state * * *.”

One of my predecessors, with whom I am in accord, had occasion to consider whether employees of this type of agency were in state service within the meaning of the civil service laws (Opinion No. 182, Opinions of the Attorney General for 1939, page 213). In applying essentially the same definition of civil service to employees of bridge commissions it was there said at page 216.

“* * * That such commissions are a legal entity separate in existence from the creating power can not be escaped in view of certain definite provisions of the act. The strongest of these among others, is that the commissions and employees are paid not from public funds but from bridge revenues and that the commissions are empowered to employ attorneys, architects and such other employs as they may deem necessary and fix their compensation and duties; that the commissions collect, control, deposit and disburse their own funds in a manner other than is provided for the state and its political subdivisions; that the commissions may sue and be sued in their own names and carry on their businesses, generally speaking, in their own manner, not subject to the limitations of general laws governing the state and its subdivisions and not subject to the supervision of the public officers of the state, cities or counties.

“Inasmuch as such commissions have legal beings separate from that of the cities, counties or state, it must follow that they are not departments or arms of the state, city or county govern-

ments and their employes are not employes of the state, counties or cities.”

The syllabus of the 1939 Opinion reads as follows:

“Employees of the bridge commissions created under Sections 1084-2 to 1084-17, General Code, are not employes of the state, counties, cities or city school districts and therefore, are not subject to the civil service laws of the State of Ohio.”

Just as a bridge commission, the turnpike commission is a legal entity separate and apart from the several counties, cities or the state, and the reasoning of Opinion No. 182, *supra*, is thus applicable to the instant question. (Also see Opinion No. 3073, issued on June 19, 1962.)

In conclusion, therefore, it is my opinion and you are advised that employees of the Ohio turnpike commission are not “employees in the classified state service” within the meaning of Section 143.012, Revised Code, and are not entitled to appeal a termination of employment to the state personnel board of review under authority of that section.

Respectfully,

MARK MCELROY

Attorney General