

IN THE SUPREME COURT OF OHIO

KELLY BLAIR,

Appellant,

vs.

**BOARD OF TRUSTEES OF
SUGARCREEK TOWNSHIP,**

Appellee.

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CASE NO. 2011-0960

**ON APPEAL FROM THE SECOND
DISTRICT COURT OF APPEALS
FOR GREENE COUNTY, OHIO
CASE NO. 2010-CA-0003**

MERIT BRIEF OF APPELLANT KELLY BLAIR

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RECEIVED
OCT 17 2011
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
OCT 17 2011
CLERK OF COURT
SUPREME COURT OF OHIO

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PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1: A certified township police officer who is appointed chief and then is terminated as chief, other than for cause in a township where R.C. 505.49(C) is not applicable, has the automatic right to return to the position he held prior to his appointment as chief.

STATEMENT OF THE CASE

This case is an administrative appeal, pursuant to R.C. 2506.01 et seq., from the action of the Sugarcreek Township Board of Trustees terminating the employment of Kelly Blair, an eighteen-year career police officer who had risen to the rank of Chief of Police for the Township. Mr. Blair was first placed on administrative leave by decision of the Board of Trustees, in executive session, on September 8, 2006, with termination to follow if he did not resign within twenty-one days. Mr. Blair's employment with the Township was terminated by a resolution of the Board of Trustees, Resolution Number 2006-09-18-12, passed September 18, 2006. There was no record made of any debate or reason for the decision to terminate Mr. Blair, or the earlier decision to place him on leave. There was no hearing offered to Mr. Blair and no transcript recording the determination to fire him.

Mr. Blair initiated this appeal of the decisions placing him on leave and terminating his employment on September 18, 2006, and filed an Amended Notice of Appeal on September 27, 2006. Because there was no transcript or other sufficiently complete record of either of the Board's decisions, Mr. Blair filed a motion to strike the record that was submitted by the trustees and requested a de novo hearing pursuant to R.C. 2506.03. An evidentiary hearing was held on March 8, 2007 and continued on March 15, 2007. The appeal was briefed, and the Magistrate issued a decision on September 20, 2007 ordering that Kelly Blair be reinstated to his position as constable with back pay and benefits. The Board objected to the Magistrate's decision, and on February 28, 2008, the trial court adopted the Magistrate's decision.

The Township appealed to the Second District Court of Appeals. The Court of Appeals held that Mr. Blair had not been terminated as a police constable by the Trustees' Resolution of September 18, 2006, because the resolution did not specifically state that Mr. Blair was being

terminated from his employment as a constable. *Blair v. Bd. of Trustees of Sugarcreek Township*, 2nd Dist. No. 08CA16, 2008-Ohio-5640, ¶17 (*Blair I*) (Appx.1). The Court of Appeals directed the trial court to consider Mr. Blair's arguments and evidence regarding "rights of retention as a certified police constable and/or former certified police officer of which the Trustees' action deprived him." *Id.*, ¶18.

A second hearing before the trial court Magistrate was held April 29 and May 1, 2009, at which Mr. Blair introduced evidence and testimony regarding his history with the Sugarcreek Police Department. The trial court Magistrate erroneously held that "[i]f Kelly Blair is to return as a police officer in the position he held prior to becoming chief of police, Sugarcreek Township must meet the criteria set forth in R.C. 505.49(C)." (Magistrate's Decision, Appx.10) Mr. Blair objected to the Magistrate's Decision, and on December 12, 2009, the trial court adopted the Magistrate's Decision. Mr. Blair appealed to the Second District Court of Appeals. (Judgment Entry Adopting Magistrate's Decision, Appx.15)

In its decision in the second appeal, the Court of Appeals did an about-face, specifically holding "Appellant was a former certified police officer employee with the township and is not automatically entitled to return to the classified service in the position that he held previous to his appointment as chief." *Blair v. Bd. of Trustees of Sugarcreek Township*, 2nd Dist. No. 2010 CA 3, 2011-Ohio-1725, ¶16 (*Blair II*) (Appx.17; Final Entry, Appx.29). Blair filed a Motion for Certification of a Conflict, pointing out that the Second District's holding directly conflicted with the Seventh District Court of Appeals' holding in *Staley v. St. Clair Township Board of Trustees* (Dec. 15, 1987), 7th Dist. No. 87-C-44, 1987 Ohio App. LEXIS 10087, *5-6 (Appx.31). In that case, the Seventh District Court of Appeals, interpreting what is now R.C. 505.49(B)(2), held

that a person in Mr. Blair's position could only be terminated from his position as a township police officer "under the conditions set forth in R.C. 505.491-505.495."

The Second District Court of Appeals recognized that its decision conflicted with the Seventh District's decision in *Staley*, and certified that conflict to this Supreme Court. (Decision and Entry, Appx.37; Notice of Certified Conflict, Appx.42) This Supreme Court determined that a conflict did exist, and directed the parties to brief the issue. (Entry, Appx. 45)

STATEMENT OF FACTS

Kelly Blair has been a police officer with the Sugarcreek Township police department since 1988. (1st Tr., 6.)¹ He was awarded a certificate attesting to satisfactory completion of an approved police basic training program, as required by R.C. 109.77, in 1975, and completed a refresher course in 1988. (*Id.*) He rose through the ranks of the Sugarcreek Township Police Department over the next decade, and was appointed Chief of Police for the Township in 1999. (*Id.*) Prior to September, 2006, Kelly Blair received no discipline during his tenure as Police Chief.

On September 8, 2006, the Trustees and Mr. Barry Tiffany, the township administrator, met and discussed Kelly Blair's employment with the Township. (1st Tr., 104.) Mr. Blair was given no notice of this meeting, which occurred in executive session, and was given no opportunity to present evidence or to speak. (*Id.* at 106.) The Trustees and Mr. Tiffany decided that Mr. Blair would be asked to resign. They also decided that if Mr. Blair refused to resign, he would be placed on administrative leave pending termination. (*Id.* at 163-164.) Later that day, September 8, 2006, Mr. Tiffany met with Mr. Blair, and gave Mr. Blair a Settlement Agreement

¹ Two hearings have been held in this administrative appeal, one on March 8 and 15, 2007, prior to the first appeal to the Court of Appeals; and another on April 30 and May 1, 2009, after remand. Mr. Blair will refer to the transcripts of the two hearings as the First Transcript ("1st Tr."), and the Second Transcript ("2nd Tr.")

and Release that had already been signed by the Board of Trustees and Mr. Tiffany. (*Id.*) Mr. Blair was asked to sign the Settlement Agreement and Release and to resign from his employment with Sugarcreek Township, but refused to do so, and thus was placed on administrative leave, pending termination. (*Id.* at 163-64, 182.)

As a result, on September 18, 2006, the Board of Trustees held another meeting to discuss Kelly Blair's employment with the Township. (1st Tr., 118). Again, Mr. Blair was not notified in advance of this meeting, nor was he given any opportunity to be heard. (*Id.* at 127.) He was never given any pre-termination or post-termination administrative hearing. (*Id.*) The decision to terminate Mr. Blair was effected by a resolution passed by the Board of Trustees, Resolution Number 2006-09-18-12. There was no record made of any debate or reason for the decision to terminate Mr. Blair or the earlier decision to place him on leave, other than the votes of the individual trustees.

Sugarcreek has affirmatively asserted that there "has (sic) not been any grounds upon which to believe" that Kelly Blair was guilty of "malfeasance, misfeasance, neglect of duty, [or] violation of a criminal statute." (1st Tr., 95.) As a consequence of the Trustees' decision to terminate Kelly Blair's employment, he has been deprived of income, benefits, and other emoluments of being a township police officer, without any hearing or determination that there was just cause for this decision.

ARGUMENT

PROPOSITION OF LAW NO. 1: A certified township police officer who is appointed chief and then is terminated as chief, other than for cause in a township where R.C. 505.49(C) is not applicable, has the automatic right to return to the position he held prior to his appointment as chief.

I. Pursuant to R.C. 505.49(B)(3), Mr. Blair's status as a certified township police officer entitles him to reinstatement to his last position before becoming Township Police Chief upon his removal as chief.

This case revolves around the interpretation of R.C. 505.49, the statute which empowers Ohio township boards of trustees to hire police officers for the township. R.C. 505.49 (Appx.46). The Court of Appeals below held that R.C. 505.49(B), when read in conjunction with R.C. 505.49(C), did not give a certified township police officer who had become township chief of police the right to return to the position of township police officer after removal as chief of police, unless the township fit the requirements listed in R.C. 505.49(C). *Blair II*, 2010-Ohio-1725, ¶22-24. The Court of Appeals held:

If the certified police officer employed by a township as such who is appointed chief is always still a certified police officer employed by a township as such even when employed as chief of police, there is no need for R.C. 505.49(C), regardless of the size of the township. The statute gives a right to a chief in larger townships to return to his or her position "held previous" which implies that as chief he or she does not hold the position. Further, even this right is not imposed by the legislation on smaller townships without a civil service commission.

Blair II, 2010-Ohio-1725, ¶23. This holding is in conflict with the holding of the Seventh District Court of Appeals in *Staley*, supra, which is the reason this Supreme Court granted jurisdiction to hear this appeal. This holding also misstates the purpose and effect of R.C. 505.49(C), which misstatement led to the Second District's erroneous holding.

R.C. 505.49 was amended by the Ohio Legislature in 1974, adding the language that is now R.C. 505.49(C). This amendment allowed townships of a certain size to establish civil service commissions, and to place their police departments under the authority of these civil

service commissions. In order to accomplish this, it was necessary to remove these civil service townships from the operation of what is now R.C. 505.49(B). As a result, police chiefs in these civil service townships lost their tenure rights, rights which they had previously had under what is now R.C. 505.49(B). Thus, in 1978, the Legislature amended what is now R.C. 505.49(C), reinstating the tenure rights of police chiefs in civil service townships. Thus chiefs in civil service townships were given the same tenure rights that police chiefs in non-civil service townships had always had under what is now R.C. 505.49(B).

The provisions of 505.49(C), which deal with the employment rights of police officers in “civil service townships,” townships that fit the criteria under R.C. 505.49(C)(1), were added by amendment in 1974. See Am. H.B. No. 513, 135 Ohio Laws 693-715 (Appx.52). The amendment was part of a larger legislative schema, which allowed unincorporated townships of a certain size to create civil service commissions, and made the police departments of those townships subject to the civil service commissions, which were to be governed by the “procedures for the employment, promotion and discharge of police personnel provided by Chapter 124. of the Revised Code.” *Id.* at 715. This purpose is recognized in the title of the bill, which states that it is “An Act ... to amend ... the Revised Code to allow certain townships to establish civil service commissions for the employment, promotion, and discharge of township policemen and firemen.” Am. H.B. No. 513, 135 Ohio Laws 693.

Prior to this amendment, all police personnel employed by any township were protected by the tenure rights contained in R.C.505.49(A), which is now R.C. 505.49(B). In order to place these townships under the operation of the civil service statutes contained in R.C. Chapter 124, it was necessary to remove them from the operation of R.C. 505.49(B). Thus, R.C. 505.49(C) begins with the sentence, “Division (B) of this section does not apply to a township that has a

population of ten thousand or more persons residing within the township and outside of any municipal corporation, that has its own police department employing ten or more full-time paid employees, and that has a civil service commission established under division (B) of section 124.40 of the Revised Code.”

By subjecting all police personnel employed by these civil service townships to the classified/unclassified distinctions contained in R.C. Chapter 124, and exempting them from the operation of R.C. 505.49(B), the legislature inadvertently destroyed the tenure rights of certified police officers who had become police chiefs in these civil service townships. In order to correct this unintended consequence of allowing larger townships to create civil service commissions, in 1978 the Legislature passed Am. H.B. No. 671, 137 Ohio Laws 3209-3215 (Appx.75). This bill reinstated the tenure rights of these civil service township chiefs, stating that, while these chiefs were considered to be in the unclassified civil service, if such a chief were removed by the board of trustees or resigned, that chief would “be entitled to return to the classified service in the township police department, in the position he held previous to his appointment as chief of police.” *Id.* at 3215. This purpose is also reflected in the title of the bill: “An Act to amend sections 124.11, 505.38 and 505.49 of the Revised Code to permit the board of township trustees in a civil service township to appoint the fire and police chief to serve at the pleasure of the board, and to entitle police and fire chiefs so appointed who are subsequently removed from that position to return, upon removal, to their previous positions in the classified service.” Am. H.B. No. 671, 137 Ohio Laws 3209.

The 1978 amendment that added this provision did not alter in any way the statutory protections for township police officers that already existed. *Id.* This Supreme Court described these portions of R.C. 505.49(C) (then R.C. 505.49(B)) as a “restate[ment]” of the law as it

applied to township chiefs of police. *Smith v. Fryfogle* (1981), 70 Ohio St.2d 58, 60, 434 N.E.2d 1346. Had the legislature intended in 1978 to eliminate tenure for certified police officers subject to promotion to the position of chief in non-civil service townships, it could have done so with a clear statement to that effect. On the contrary, the 1978 amendment merely assured that police chiefs in civil service townships, although officially being part of the unclassified service, did not lose the same tenure rights held by other township police chiefs, which they held before the enactment of Am. H.B. No. 513 in 1974.

The plain language of the statutory scheme in existence before the 1978 amendments already guaranteed the right to tenure of certified police officers and constables. See 1974 Ohio Op. Atty. Gen. No. 74-038 at 2-167. This principal is made clear in *Staley v. St. Clair Township Bd. of Trustees* (Dec. 15, 1987), 7th Dist. No. 87-C-44, 1987 Ohio App. LEXIS 10087. The way in which the statute was amended, and the way in which this Supreme Court has interpreted the statute, make it clear that the Legislature did not intend to deprive police chiefs of non-civil service townships of their rights of retention, but only to ensure that police chiefs in civil service townships retained the rights they had possessed before the statute was amended. The statute was amended in such a way as to ensure that no township, whether or not it is eligible to create a civil service commission, can deprive a certified officer of tenure simply by appointing such an officer to the position of chief.

The Court of Appeals misinterpreted this subsection of the statute, and its purpose, by stating that it would be invalidated if all township police chiefs had the right to return to their previously held positions upon removal. *Blair II*, ¶23. The purpose of this subsection was to allow townships to create civil service commissions to deal with their employment issues. The passage reinstating the tenure rights of the police chiefs which was added in 1978 was an

afterthought, an attempt to right a wrong inadvertently caused by the amendment in 1974. It was not and is not the main thrust of the subsection. It is an effort to guarantee that all township police chiefs have the same right to return to their former positions after being removed as chief.

The Board's assertion, and the Court of Appeals' conclusion, that Kelly Blair has no statutory right to return to his previous position as a certified township police officer, ignores his rights under 505.49(B). R.C. 505.49(B) very clearly states that a certified township police officer cannot be terminated outside the process contained in R.C. 505.491 through R.C. 505.495. Kelly Blair is a certified township police officer, and has been since 1988. Thus he cannot be terminated, as a police officer, outside of the process in R.C. 505.491 through R.C. 505.495. He is thus entitled to reinstatement to his former position. This is consistent with this Supreme Court's holding in *Smith v. Fryfogle*, supra.

The Court of Appeals' decision suggests that the protections for police chiefs in civil service townships under R.C. 505.49(C), which only apply to police chiefs in civil service townships, somehow disprove the protections for certified township police officers established through other parts of the statute. This interpretation runs directly contrary to *Staley*, which reviewed the same statutory scheme, since there have been no substantive amendments since the time of that decision. The *Staley* Court had the same statutory scheme before it, including the provision that is now R.C. 505.49(C), formerly R.C. 505.49(B), and held that certified police officers in ordinary, non-civil-service-commission townships, who are promoted to the position of police chief, did not lose their tenure as a consequence of the promotion.

As Mr. Blair has argued many times, it is his status as a certified police officer that mandates his reinstatement under R.C. 505.49(B). R.C. 505.49(B)(3) states:

Except as provided in division (D) of this section, a patrol officer, other police district employee, or police constable, who has been awarded a certificate attesting to the satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code.

Mr. Tiffany, the township manager, expressly testified that Mr. Blair was never given the opportunity to return to the last position he held before becoming chief, or to any position he held with the Township prior to becoming chief. (2nd Tr., 153:19-24, 154:5-23.) Nor was Mr. Blair accused of any wrongdoing, or given notice and a hearing to contest such accusations. (1st Tr., 95, 127) Thus, Mr. Blair was not removed pursuant to “the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code,” and he is entitled to be reinstated to his position as a certified township police officer. *Staley, supra*. See also *State ex rel. Stacy v. Batavia Local Sch. Dist. Bd. of Educ.*, 105 Ohio St.3d 476, 480, 2005-Ohio-2974, ¶24.

The *Staley* decision is good law, correctly interpreting and applying R.C. 505.49(B)(3), and should be affirmed by this Supreme Court. It is fundamentally illogical for the law to hold—as it must if the Second District Court’s decision is affirmed—that tenured certified township police officers who are elevated to the position of Police Chief automatically surrender all the tenure rights that they have earned through their careers merely by accepting a promotion. At best, such a law would create a destructive disincentive for experienced police officers to ever accept such a promotion. At worst, it is a trap for the unwary police officer who, like Kelly Blair, is told later that he has surrendered all rights and been deprived of all employment without notice. Following the *Staley* rule avoids such an illogical and undesirable result.

The *Staley* decision, unlike the Second District Court of Appeals’ decision below, is consistent with this Supreme Court’s decision in *Smith v. Fryfogle* (1982), 70 Ohio St.2d 58, 434 N.E.2d 1346. In that case, this Supreme Court reaffirmed that the position of Township Chief of

Police is held at the pleasure of the Board of Trustees. *Id.* In *Smith*, however, although the appellant was removed from his position as Chief of Police for Knox Township, he still retained his position as a patrolman. *Smith*, 70 Ohio St.2d at 61. The *Staley* decision is also consistent with the result in *State ex rel. McElroy v. Twp. of Copley* (Apr. 12, 1978), 9th Dist. App. No. 8718, 1978 Ohio App. LEXIS 10839 (“[Police Chief] McElroy was not removed from the force but was moved in grade. No hearing was necessary in view of his original appointment. Tenure in itself does not preclude his being changed in grade.”)

The *Staley* decision is consistent with this Supreme Court’s previous decisions, as well as the decisions of the other courts of appeals. The Second District Court of Appeals’ decision below, on the other hand, ignores established precedent in order to give the applicable statutes an illogical interpretation. For this reason, the decision of the Second District Court of Appeals must be reversed, and Mr. Blair’s proposition of law must be adopted.

II. Mr. Blair did not waive his tenure rights under R.C. 505.49(B)(3) by accepting the position of chief of police.

In addition to comports with case law interpreting R.C. 505.49, the *Staley* holding also comports with the law generally governing classified public employees and the similar protections which apply to those employees. “To constitute a complete and operative resignation of a classified public officer, there must be an intention to relinquish a position accompanied by a positive irrevocable act of relinquishment.” *State ex rel. Reeder* (Franklin C.P. 1958), 82 Ohio L.Abs. 225, 165 N.E.2d 490. See also *Hooper v. Brown* (Mar. 20, 1979), 4th Dist. No. CA 931, 1979 Ohio App. LEXIS 12443, *3. The *Reeder* decision was upheld by the Tenth District Court of Appeals, which held “[w]e also are in complete agreement with the able opinion of the Trial Judge and find that the relator, Reeder, has neither by act, word or deed, resigned, waived nor abandoned his status as principal personnel technician of the Civil Service Commission.” *State*

ex rel. Reeder (1959), 166 N.E.2d 264. The evidence in the case at bar is that Mr. Blair never made any statement or signed any waiver relinquishing his right to continued employment if he were to be removed as chief of police. Mr. Tiffany, as the representative of the Township, has stated that he has no knowledge of any such waiver. (2nd Tr., 161:21-162:14.)

Mr. Blair's testimony shows that he believed that he was not giving up his right to continued employment by accepting the position of chief. Mr. Blair testified that it was his understanding that if the Township chose to remove him as police chief he would return to his former rank. (2nd Tr., 32:14-16.) He testified that this understanding was based upon seeing other Sugarcreek Township chiefs of police return to their former ranks after either resigning or being removed as chief. (2nd Tr., 31:8-12, 32:1-16.) Mr. Blair testified that he would not have taken the position of chief had he not believed that he was entitled to return to his former position upon his removal as chief. (2nd Tr., 32:14-33:1, 35:2-14, 126:16-24.) He testified that no representative of the Township ever told him that these protections would no longer apply if he took the position of chief. (2nd Tr., 36:5-11.) This testimony demonstrates that Mr. Blair did not intend to waive any protections by becoming chief of police, thus there was no waiver of those protections.

In memoranda below, the Township cited to *Chubb v. Ohio Bureau of Workers' Comp.*, 81 Ohio St.3d 275, 1998-Ohio-628, claiming that a classified public employee gives up such protections by accepting an unclassified position. However, in *Chubb*, the employee signed a waiver specifically relinquishing her rights as a classified public employee. See *Gissiner v. City of Cincinnati*, 1st Dist No. C-040070, 2004-Ohio-6999, ¶6 (interpreting *Chubb.*), discretionary appeal not allowed by *Gissiner v. Cincinnati*, 105 Ohio St.3d 1519, 2005-Ohio-1880, 826 N.E.2d 316. See also *Gissiner v. City of Cincinnati*, 1st Dist No. C-070536, 2008-Ohio-3161, ¶4 (public

employee did not sign waiver of rights as classified employee when accepting temporary unclassified position, and thus retained rights as classified employee.) In contrast, where a public employee does not sign such a waiver, he does not relinquish his rights as a tenured employee merely by taking a higher paid position. *Id.* Kelly Blair did not knowingly relinquish his rights to tenure as a certified police officer. It is clear under R.C. 505.49(B), the *Staley* decision, and Ohio case law dealing with waiver of tenure rights, that the law did not work to force Mr. Blair to surrender those rights unknowingly.

The Second District Court of Appeals' decision below, which held that Mr. Blair "was a former certified police officer," is contrary to the law of this State regarding the waiver of a civil servant's tenure rights. *Blair II*, 2011-Ohio 1725, ¶24. Both the law and the facts of this case agree that Mr. Blair never took any affirmative action that indicated that he knowingly waived his tenure rights as a certified township police officer. For this reason, the decision of the Second District Court of Appeals must be reversed, and Mr. Blair's proposition of law must be adopted.

III. The interpretation of R.C. 505.49(B) in the *Staley* decision is consistent with public policy as demonstrated by Ohio law, and the laws of other states.

This Supreme Court has often held that the public policies adopted by the legislature may be found in the statutes passed by the legislature. See *Probasco v. Raine* (1893), 50 Ohio St. 378, 391, 34 N.E. 536 ("When the legislature, within the powers conferred by the constitution, has declared the public policy, and fixed the rights of the people by statute, the courts cannot declare a different policy or fix different rights."); *Joseph v. Alexander* (1984), 12 Ohio St.3d 88, 89, 465 N.E.2d 448 ("This legislation, not being in conflict with any constitutional provision, establishes the applicable rule of public policy."); *Sutton v. Tomco Machining, Inc.*, 129 Ohio St.3d 153, 157, 2011-Ohio-2723, ¶11, 950 N.E.2d 938 ("Clear public policy' sufficient to

justify an exception to the employment-at-will doctrine may be expressed by the General Assembly in statutory enactments ...”) In amending R.C. 505.49(C) to grant police chiefs in civil service townships the same tenure rights as police chiefs in non-civil service townships, the legislature expressed a public policy in favor of allowing township police chiefs to return to their positions as certified township police officers upon their removal as chiefs of police.

There is no other logical explanation for the 1978 amendment to R.C. 505.49. If the legislature did not wish to ensure that chiefs in civil service townships had the same rights as chiefs in non-civil service townships, they would not have passed Am. H.B. No. 671. The conclusion of the Second District Court of Appeals, that the Legislature intended to give special protections only to police chiefs in civil service townships, makes no sense. Putting aside questions of equal protection, there is simply no reason to give police chiefs in civil service townships protections that police chiefs in other townships, or other municipalities for that matter, do not have.

Kelly Blair’s testimony established that he relied on this public policy, and the protections conferred by R.C. 505.49(B), when he decided to accept the position as Sugarcreek Township Chief of Police. Mr. Blair stated that he would never have accepted the position as chief of police if he thought he could be terminated not only as chief, but as a police officer as well, at the whim of the Township Board of Trustees. (2nd Tr., 32:14-33:1, 35:2-14, 126:16-24.) Kelly Blair relied on the Ohio Courts to protect the property interest in his employment granted to him by R.C. 505.49(B). Countless other township police officers over the past twenty years, confronted with the decision of whether to serve as chief of police for their township, have relied on the same principle of law. The Second District Court of Appeals has determined to change this longstanding rule based on nothing but its own nonsensical reading of the statute.

This decision, if allowed to stand, will deter any township police officer from accepting the position of township chief of police. No township police officer would be willing to give up a position with job security in favor of a position where he or she can be terminated, for no reason at all, at the whim of a three-person board of trustees. The result of such a rule of law will be the refusal of experienced township police officers to serve as chiefs of police. Instead, less experienced officers from outside these small communities will take these positions. This lack of experience and local insight at the highest levels will have the predictable effect of eroding the quality and professionalism of law enforcement in these communities. For these reasons, the decision of the Second District Court of Appeals must be overturned.

The same public policy reflected in R.C. 505.49 and the *Staley* decision is reflected in the statutes and common law of other states. 62 Corpus Juris Secundum (2011), Municipal Corporations, Section 602, states that removal of a municipal police chief from the position of chief does not “deprive the appointee of his original status or seniority as a police officer.” The Pennsylvania Supreme Court has held:

It is clear that if a policeman, under [1939, P.L. 689], becomes designated by the council as chief he still remains a police officer; he merely holds thereafter a higher rank or position on the force; if at any time, therefore, this higher rank or office should be abolished it would not operate to deprive him of his original status as a policeman, an appointment which he had gained by passing the tests required by the Civil Service Act of June 5, 1941, P.L. 84, and to the protection of which act he remained entitled.

McGuckin v. West Homestead (Pa. 1948), 360 Pa. 311, 314, 62 A.2d 23, 24.

The Indiana Supreme Court has reached the same conclusion, holding:

The mayor likewise has the right to remove the chief of police appointed by him, although if such chief, when appointed, came from a lower rank in the police force he can only be demoted and can be removed from the force only after charges are filed and served upon him and a hearing held by the board of public safety.

State v. Reichert (Ind. 1948), 226 Ind. 358, 363, 80 N.E.2d 289, 291 (internal citations omitted). The Indiana Court of Appeals stated the issue clearly in *State ex rel. Warzyniak v. Grenchik* (Ind. App. 1978), 177 Ind. App. 393, 402, 379 N.E.2d 997, 1003, where it held:

[W]hen a City may demote a policeman only for cause, this protection extends to a Police Chief to protect him at the level he attained in his years as a Police Officer. Upon replacement as Chief, then, he must be reinstated to the position he occupied prior to his appointment as Chief, unless a cause determination is made, as would occur for any other demotion.

See also *Howard v. Kokomo* (Ind. App. 1982), 429 N.E.2d 659 (holding that former police chief could not be demoted to rank below that which he held before becoming chief.)

The Illinois Court of Appeals recently held that a village police chief who was removed by the board of trustees had the right to return to the rank of sergeant, the rank he held prior to becoming chief. *Szewczyk v. Bd. of Fire and Police Commissioners of the Vill. of Richmond* (Ill.App. 2008), 381 Ill.App.3d 159, 885 N.E.2d 1106. The Illinois Court of Appeals has also held that a police chief who had been terminated from that position was entitled to a writ of mandamus ordering the municipality to reinstate him to the position he held prior to becoming chief. *People ex rel. Bubash v. Bd. of Fire and Police Commissioners of the Vill. of Thornton* (Ill.App. 1973), 14 Ill.App.3d 1042, 303 N.E.2d 776.

Similarly, the Maryland Court of Appeals has held that a county police officer who was appointed county chief of police was still a county police officer, and was entitled to a hearing before his dismissal, just as any other police officer would be entitled. *Bd. of County Commissioners of Howard County v. Moxley* (Md.App. 1960), 222 Md. 113, 158 A.2d 895. Thus, the Court held, even though the petitioner was not entitled to a writ of mandamus ordering that he be reappointed to the position of county police chief, because he did not receive a hearing, he was entitled to a writ ordering that he be reinstated as a county police officer. *Id.*

Even the Federal Courts have enforced this public policy, as laid down by the State governments. See *Muncy v. City of Dallas* (C.A.5, 2003) 335 F.3d 394, 399 (Interpreting city charter that held, in cases involving removal of a police chief, that “the chief ... shall be restored to the rank and grade held prior to appointment to the position, or reduced to a lower appointive rank.”)

The element that all these cases have in common is the legal principle that a police officer does not stop being a police officer when he becomes chief of police, and he does not give up the protections that he is entitled to as a police officer by accepting the position of chief. This is the principle that was rejected by the Second District Court of Appeals when it held that “Appellant was a former certified police officer employee with the township and is not automatically entitled to return to the classified service in the position that he held previous to his appointment as chief.” *Blair II*, 2011-Ohio-1725, ¶24. This is also the principle that was upheld by the *Staley* Court when it held “Mr. Staley is a certificated peace officer. The Board may terminate appellee’s employment as a township police officer only under the conditions set forth in R.C. 505.491-505.495.” *Staley*, 1987 Ohio App. LEXIS 10087, *6.

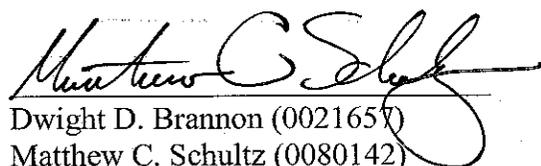
In this regard, the *Staley* decision is certainly correct, and the Court of Appeals’ decision below is certainly wrong. Under the Revised Code a township police chief is referred to explicitly as the “chief law enforcement officer” of a township. R.C. 177.02, 177.03 (incorporated within R.C. 505.49(G)). Thus, a police chief is the chief officer within a township, but he remains a police officer, with the powers and rights of other officers. It would be a grave error, with the potential for uncountable and undesirable ramifications, to hold with the court of appeals, that once he is appointed, a police chief is no longer a police officer.

The *Staley* decision agrees with the caselaw from Maryland, Pennsylvania, Indiana, Illinois, and Texas, the only states which seem to have considered the issue. The Second District Court's decision below is an outlier. If the decision below is affirmed, it will not only place Ohio in a minority of states that interpret the law in this way, it will, as far as is possible to tell, place Ohio in a minority of one. The Second District's conclusion that Mr. Blair unwittingly gave up his protections as a police officer by accepting the position of police chief is not only contrary to Ohio law on tenured civil servants, as discussed above, it is also contrary to the body of established law in this country regarding police officers who accept the office of police chief. For this reason, the decision of the Second District Court of Appeals must be reversed, and Mr. Blair's proposition of law must be adopted.

CONCLUSION

The decision of the Second District Court of Appeals holding that Kelly Blair did not retain the right to return to the position he held before becoming chief of police upon his removal as chief ignores the plain language of R.C. 505.49(B)(3). The Court of Appeals' reliance on R.C. 505.49(C) to reach its conclusion ignores the purpose of R.C. 505.49(C), which was to allow large townships to create civil service commissions to govern their police and fire departments, not to give police chiefs in civil service townships rights that no other police chiefs in Ohio have. In addition, this holding conflicts with Ohio law on the waiver of rights as a tenured public employee. Lastly, this holding is contrary to the public policy exemplified by R.C. 505.49, which is mirrored in the law of other states. The decision of the Second District Court of Appeals is an outlier, and if affirmed, will place Ohio in a minority of one with regard to how it treats its police chiefs. For all these reasons, the decision of the Second District Court of Appeals must be reversed, and Kelly Blair's proposition of law must be adopted.

Respectfully submitted,



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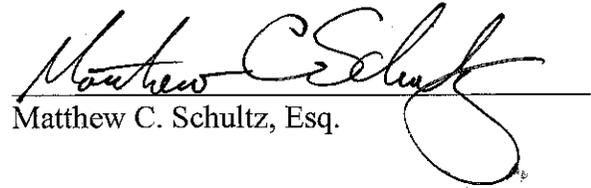
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing was served on the following by regular U.S. Mail, this 14th day of October, 2011.

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Dayton, Ohio 45423


Matthew C. Schultz, Esq.

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

KELLY BLAIR :
Plaintiff-Appellee : C.A. CASE NO. 08CA16
vs. : T.C. CASE NO. 06CV811
BOARD OF TRUSTEES OF : (Civil Appeal from
SUGARCREEK TOWNSHIP : Common Pleas Court)
Defendants-Appellants :

O P I N I O N

Rendered on the 31st day of October, 2008.

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Dayton, OH 45402

Attorneys for Plaintiff-Appellee

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Chief, Greene County Prosecutor's Office, 55 Greene Street,
First Floor, Xenia, OH 45385

and

Edward J. Dowd, Atty. Reg. No. 0018681; Dawn M. Frick, Atty.
Reg. No. 0069068, 40 N. Main Street, 1610 Kettering Tower,
Dayton, OH 45423

Attorneys for Defendants-Appellants

GRADY, J.:

This is an appeal from a final judgment of the court of

common pleas entered in an R.C. 2506.01 appeal to that court from a decision of a board of township trustees.

In 1988, Appellant, Board of Trustees of Sugarcreek Township ("Trustees"), hired Appellee, Kelly E. Blair, as a township police officer. Blair was subsequently awarded a certificate by the Ohio Peace Officer's Training Academy attesting to his satisfactory completion of a basic training program, which is required by R.C. 109.77 for permanent appointment as a police officer.

Blair was promoted to Police Sergeant in 1989. In May of 1998, the Trustees appointed Blair Chief of Police for the township district. In August of 1998, the Trustees additionally appointed Blair to the unpaid position of police constable. The purpose of that additional appointment was to allow Blair to perform certain police functions within the City of Bellbrook and outside Sugarcreek Township but within Greene County that Blair's position as Chief of Police for the township did not otherwise authorize him to perform.

On September 18, 2006, in its regular session, the Board of Trustees adopted Resolution Number 2006-09-18-12, which provides:

"WHEREAS, Kelly E. Blair has served as an unclassified employee of Sugarcreek Township in the capacity of Chief of

Police since April 25, 1998; and,

"WHEREAS, in accordance with Section 505.49(B) (2) of the Ohio Revised Code (ORC), the Chief of Police of the district shall serve at the pleasure of the Township Trustees; and

"WHEREAS, the Trustees of Sugarcreek Township have determined to remove Kelly E. Blair as Chief of Police solely at the pleasure of the Board and due to the nature of his unclassified position,

"NOW THEREFORE, BE IT RESOLVED, that the Sugarcreek Township Board of Trustees does hereby terminate the employment of Kelly E. Blair effective September 18, 2006."

Blair filed an appeal pursuant to R.C. 2506.01 from his termination to the court of common pleas. Blair argued that because he holds a certificate pursuant to R.C. 109.77, the Trustees were required by R.C. 509.01(B) to follow the notice and hearing requirements of R.C. 505.491 to 505.495 before terminating his appointment as a police constable, which they failed to do.

The matter was referred to a magistrate, who after hearings found in favor of Blair. The magistrate concluded that while Blair could be summarily terminated from his appointment as Chief of Police, because he served in that position at the pleasure of the Trustees per R.C. 505.49(B),

the Trustees were prevented by R.C. 509.01(B) from also terminating Blair from his appointment as a police constable without prior notice and hearing.

The Trustees filed objections to the magistrate's decision. The court overruled the objections and adopted that decision. The Trustees filed a timely notice of appeal to this court.

Before addressing the assignments of error, we will address our standard of review. In *Ledford v. Board of Zoning Appeals*, 171 Ohio App.3d 24, 2007-Ohio-1673, we wrote:

"[¶ 23] In contrast, when an appellate court reviews a trial court's decision regarding an agency order, the appellate court uses two distinct standards of review. *Lamar Outdoor Advertising v. Dayton Bd. of Zoning Appeals* (June 21, 2002), Montgomery App. No. 18902, 2002-Ohio-3159, 2002 WL 1349600, at ¶ 12. On a question of fact, an appellate court's review is limited to an abuse of discretion. *Id.* An abuse of discretion exists where the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748. However, on a question of law, an appellate court's review is *de novo*. *Ohio Dept. of Commerce, Div. of Real Estate v. DePugh* (1998), 129 Ohio App.3d 255, 261, 717 N.E.2d 763. Thus, we

apply the same standards as the trial court without deference to the trial court's decision. *Brinkman v. Doughty* (2000), 140 Ohio App.3d 494, 497, 748 N.E.2d 116."

FIRST ASSIGNMENT OF ERROR

"THE TRIAL COURT ABUSED ITS DISCRETION IN FINDING APPELLEE'S APPOINTMENT AS POLICE CONSTABLE WAS TERMINATED. NO EVIDENCE IN THE RECORD DEMONSTRATES THAT APPELLEE WAS TERMINATED FROM ANY POSITION OTHER THAN AS CHIEF OF POLICE."

Resolution 2006-09-18-12 of the Trustees, quoted above, refers to Blair's service "as an unclassified employee of Sugarcreek Township in the capacity of Chief of Police since April 25, 1998," and further states that "the Trustees of Sugarcreek Township have determined to remove Kelly E. Blair as Chief of Police." The resolution then states "that the Sugarcreek Township Board of Trustees does hereby terminate the employment of Kelly E. Blair effective September 18, 2006."

It is undisputed that Blair served as chief of police at the pleasure of the Trustees, R.C. 505.49(B), and therefore the Trustees could remove Blair from that position as they did, without prior notice or hearing. Courts have held that, in that event, any separate status the employee enjoys as a certified police officer is nevertheless subject to a relevant

notice and hearing requirement. *Staley v. St. Clair Twp. Bd. Of Trustees*, (Dec. 18, 1987), Columbiana App. No. 87-C-44. Absent a satisfaction of such requirements, the employee must be retained in that other position. *Smith v. Fryfogle* (1982), 70 Ohio St.2d 58.

Resolution 2006-09-18-12 is ambiguous with respect to whether Blair's additional appointment as a police constable is likewise terminated. To resolve that ambiguity, we employ the linguistic inference noscitur a sociis: interpret a general term to be similar to more specific terms in the series. On that basis, we find that Blair was terminated from his appointment as Chief of Police only, and not from his appointment as a police constable. Therefore, the trial court abused its discretion when it reversed and vacated the Trustees' decision to terminate Blair on a finding that the Trustees failed to comply with the statutory requirements for termination of a police constable appointed by a board of township trustees imposed by R.C. 509.01.

Blair argues that he enjoys certain rights of retention as a certified police constable and/or former certified police officer of which the Trustees' action deprived him. That contention involves issues the trial court did not reach. Blair may present evidence on those matters in the course of

further proceedings.

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT APPELLEE WAS ENTITLED TO DUE PROCESS RIGHTS IN HIS SECONDARY APPOINTMENT AS A POLICE CONSTABLE."

The error assigned is rendered moot by our determination of the assignment of error. Therefore, we exercise our discretion pursuant to App.R. 12(A)(1)(c) and decline to decide the error assigned.

Conclusion

Having sustained the first assignment of error, we will reverse and vacate the judgment of the court of common pleas from which this appeal is taken and remand the case for further proceedings.

WOLFF, P. J. And BROGAN, J., concur.

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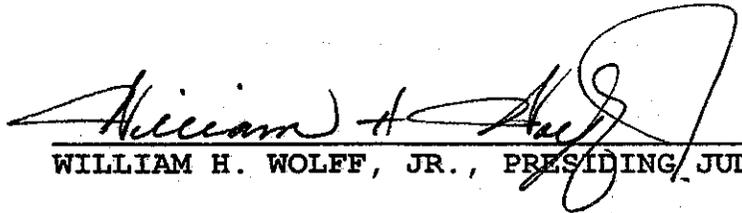
- Dwight D. Brannon, Esq.
- Matthew C. Schultz, Esq.
- Thomas C. Miller, Esq.
- Edward J. Dowd, Esq.
- Dawn M. Frick, Esq.
- Hon. J. Timothy Campbell

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

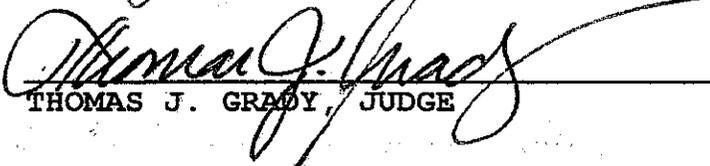
KELLY BLAIR :
Plaintiff-Appellee : C.A. CASE NO. 08CA16
vs. : T.C. CASE NO. 06CV811
BOARD OF TRUSTEES OF : FINAL ENTRY
SUGARCREEK TOWNSHIP :
Defendants-Appellants :

.....

Pursuant to the opinion of this court rendered on the 31st day of October, 2008, the judgment of the trial court is Reversed and Vacated, and the matter is Remanded to the trial court for further proceedings pursuant to the opinion. Costs are to be paid as provided in App.R. 24.


WILLIAM H. WOLFF, JR., PRESIDING JUDGE


JAMES A. BROGAN, JUDGE


THOMAS J. GRADY, JUDGE

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IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO
GENERAL DIVISION (CIVIL)

FILED
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TERRI A. MAZUR, CLERK
COMMON PLEAS COURT
GREENE COUNTY, OHIO

KELLY BLAIR,

CASE NO. 06CV0811

Plaintiff,

Judge J. Timothy Campbell

-vs-

BOARD OF TRUSTEES OF
SUGARCREEK TOWNSHIP,
et al.,

Magistrate's Decision

Defendants.

This matter comes before the Court on remand from the Second District Court of Appeals. The appellate court affirmed this Court's decision that Kelly Blair could be summarily terminated as police chief of Sugarcreek Township without notice or hearing. The court reversed and remanded for further proceedings the part of this Court's Decision that held Kelly Blair was also terminated as certified police constable. In reversing and vacating the decision of Sugarcreek Township, this Court held that Mr. Blair was entitled to notice and hearing before he could be terminated as certified police constable. In reversing this Court, the appellate court held that Kelly Blair was not terminated from his appointment as a certified police constable. More importantly, the appellate court held that Kelly Blair was entitled to present evidence in *further proceedings* on issues this Court did not reach, i.e., whether Blair *enjoys certain rights of re-*

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tion as a certified police constable and/or former certified police officer of which the Trustees' action deprived him.

In this Court's original decision it held that Kelly Blair served at the pleasure of the Sugarcreek Township Trustees and was therefore properly terminated as police chief. On appeal the Second District Court of Appeals affirmed that part of the decision. The second part of this Court's decision centered around Kelly Blair's dismissal as a certified police constable. This Court held that he was terminated as certified police constable, but because he was a *certified police constable*, he was entitled to statutory rights of due process, and because those rights were violated by the Township, he was entitled to have his position of certified police constable reinstated with back pay consistent with that position. The Court notes that the record was absent any evidence to quantify back pay. On appeal the Second District Court of Appeals reversed, clearly stating that Mr. Blair was never terminated as certified police constable.

Generally, this Court is not permitted to make a decision on an issue not properly before it. The court does not issue advisory opinions. In this case, Kelly Blair was never terminated as certified police constable. Blair argues that he was constructively discharged as certified police constable when he was terminated as police chief, but the appellate court did not find as much when it reversed this Court's decision finding he had been terminated. Accordingly, this Court finds that Kelly Blair was never fired as certified police constable and

09-12-1577

therefore not a proper issue for appeal. The Court notes from recent testimony that the position of certified police constable did not carry with it any increments of pay and even though Mr. Blair was not fired as certified police constable he would not be entitled to back pay for that position.

The appellate court also referred this case back to the trial Court so that Blair may present evidence...in the course of further proceedings on matters regarding the issue of retention of Kelly Blair with Sugarcreek Township as a certified police officer.

This Court in reviewing this case finds that the appeal taken from the decision of the Sugarcreek Township Trustees relates to two issues:

- 1) termination of Kelly Blair as police chief;
- 2) termination of Kelly Blair as certified police constable.

Nothing in the notice of appeal addressed the issue of what rights of retention Mr. Blair may have as a certified police officer. Presumably, this is because Mr. Blair was fighting to be reinstated to the position of police chief (the Court does note the issue was raised in Appellant's memoranda of law). Only now that the appellate court has affirmed this Court's decision to uphold the Township termination of Kelly Blair as police chief does the issue of certified police officer become center and forefront. If Kelly Blair is to return as a police officer in the position he held prior to becoming chief of police, Sugarcreek Township must meet the criteria set forth in R.C. 505.49(C).

R.C. 505.49(C) provides in part:

09-12-1578

(C) Division (B) of this section does not apply to a township that has a population of ten thousand or more persons residing within the township and outside of any municipal corporation, that has its own police department employing ten or more full-time paid employees, and that has a civil service commission established under division (B) of section 124.40 of the Revised Code. That type of township shall comply with the procedures for the employment, promotion, and discharge of police personnel provided by Chapter 124 of the Revised Code, except that the board of township trustees of the township may appoint the chief of police, and a person so appointed shall be in the unclassified service under section 124.11 of the Revised Code and shall serve at the pleasure of the board. A person appointed chief of police under these conditions who is removed by the board or who resigns from the position shall be entitled to return to the classified service in the township police department, in the position that the person held previous to the person's appointment as police chief.

On August 4, 2009, the parties to this case filed with this Court a

Stipulation of the Parties that states as follows:

- 1) Sugarcreek Township has a population of less than ten thousand people or more residing within the township and outside of any municipal corporation; and
- 2) Sugarcreek Township does not have a civil service commission established under division (B) of section 124.40 of the Revised Code.

Based on the stipulation by the parties it is clear that Sugarcreek Township is not a township where the police chief, in this case Kelly Blair, would be entitled to return to a position in the police department that he held prior to his appointment as chief of police.

Therefore, this Court finds that Kelly Blair was not terminated as certified police constable, but even if he was terminated, he would not be entitled to back pay for that designation, because no compensation was attached to that position.

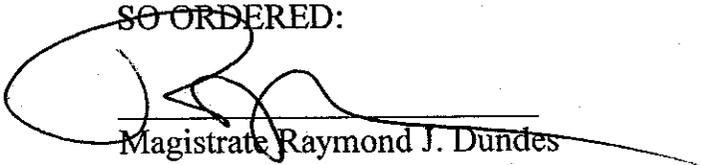
Also, Sugarcreek Township was not required to offer him a position in the police

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department that he held prior to his appointment as chief of police.

Accordingly, this appeal is DISMISSED.

SO ORDERED:


Magistrate Raymond J. Dundes

Parties and Counsel are referred to Civ.R. 53 regarding the filing of objections to the Magistrate's Decision. A party may not assign as error on appeal the Court's adoption of any factual finding or legal conclusion of a Magistrate, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R.53(D) (a)(ii), unless that party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).

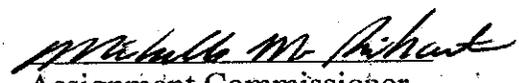
SERVICE OF COPY: A copy hereof was served upon:

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Edward J. Dowd, Esq., One Prestige Place, Suite 700, Miamisburg, Ohio 45342

by fax and/or ordinary mail this date of filing.


Assignment Commissioner

09-12-1580

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TERRI A. MAZUR, CLERK
COMMON PLEAS COURT
GREENE COUNTY, OHIO

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO
GENERAL DIVISION (CIVIL)

KELLY BLAIR,

CASE NO. 2006 CV 0811

Appellant,

JUDGE J. TIMOTHY CAMPBELL

v.

BOARD OF TRUSTEES OF
SUGARCREEK TOWNSHIP, et al.,

JUDGMENT ENTRY ADOPTING
MAGISTRATE'S DECISION

Appellees.

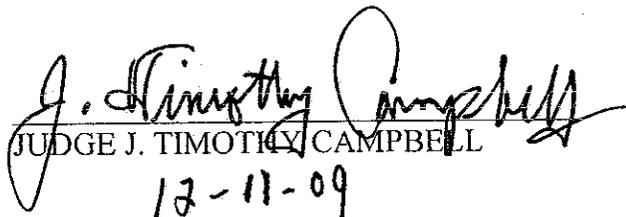
**FINAL APPEALABLE
ORDER**

This matter is before the Court on the Magistrate's Decision filed on August 31, 2009. On August 27, 2009, Appellant filed Objections to the Magistrate's Decision. On September 8, 2009, Appellee filed its Response to Appellant's Objections. On September 18, 2009 Appellant filed its Reply Memorandum in Support of his Objections to the Magistrate's Decision.

The Court has reviewed the facts independent of the findings by the Magistrate, has reviewed the Court's file, the evidence as reported by the Magistrate, and the Objections and Responses by the Parties. The Court is of the opinion that the Magistrate properly determined the factual issues and correctly applied the law. Therefore, it is the Court's Decision to DISMISS this Appeal.

The Court finds that there is no error of law or other defect on the face of the Magistrate's Decision. Therefore, the Magistrate's Decision, attached hereto, is hereby adopted and approved and is the Order of the Court.

IT IS SO ORDERED.


JUDGE J. TIMOTHY CAMPBELL
12-11-09

09-12-1574

CERTIFICATE OF SERVICE: A copy hereof was mailed and/or faxed to:
DWIGHT D. BRANNON, ESQ. and MATTHEW C. SCHULTZ, ESQ., via facsimile (937) 228-8475
THOMAS C. MILLER, ESQ., via facsimile (937) 562-5258
EDWARD J. DOWD, ESQ., and DAWN M. FRICK, ESQ., via facsimile (937) 222-1970
on the date of the filing


Assignment Commissioner

09-12-1575

FILED

2011 APR -8 AM 11:17

**COURT OF APPEALS
SECOND APPELLATE DISTRICT**

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

KELLY BLAIR :

Plaintiff-Appellant :

v. :

BOARD OF TRUSTEES
OF SUGARCREEK TOWNSHIP, et al. :

Defendant-Appellee :

C.A. CASE NO. 2010 CA 3

T.C. NO. 06CV811

(Civil appeal from
Common Pleas Court)

OPINION

Rendered on the 8th day of April, 2011.

DWIGHT D. BRANNON, Atty. Reg. No. 0021657 and MATTHEW C. SCHULTZ, Atty. Reg. No. 0080142, 130 West Second Street, Suite 900, Dayton, Ohio 45402
Attorney for Plaintiff-Appellant

THOMAS C. MILLER, Atty. Reg. No. 0075960, Civil Division Chief, Greene County Prosecutor's Office, 55 Greene Street, First Floor, Xenia, Ohio 45385 and EDWARD J. DOWD, Atty. Reg. No. 0018681 and DAWN M. FRICK, Atty. Reg. No. 0069068, One Prestige Place, Suite 700, Miamisburg, Ohio 45342
Attorneys for Defendant-Appellee

FROELICH, J.

The essential facts of this case were set out in our opinion in a prior appeal. *Blair*

Computer

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT

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v. Board of Trustees of Sugarcreek Township, Greene App. No. 08CA16, 2008-Ohio-5640.

(*Blair I*) In that appeal by the Board, we reversed a judgment of the trial court in which the court had found that the township trustees were prevented from terminating Blair from his appointment as police constable without prior notice and hearing. We found that Blair was not terminated as a police constable and remanded "the case for further proceedings."

On remand, a magistrate found that Blair was not terminated from his constable's position, "but even if he was terminated, he would not be entitled to back pay for that designation, because no compensation was attached to that position." The magistrate also stated that the "Township was not required to offer him a position in the police department that he held prior to his appointment as chief." Blair filed objections to the magistrate's decision. The trial court overruled his objections and dismissed Blair's R.C. Chapter 2506 appeal.

FIRST ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED BY HOLDING THAT KELLY BLAIR HAD NO RIGHT OF RETENTION AS A CERTIFIED POLICE OFFICER.

"I. MR. BLAIR'S AMENDED NOTICE OF APPEAL WAS SUFFICIENT TO RAISE HIS STATUS AS A CERTIFIED POLICE OFFICER AS A BASIS FOR HIS APPEAL.

"II. MR. BLAIR'S STATUS AS A CERTIFIED POLICE OFFICER ENTITLES HIM TO REINSTATEMENT TO HIS LAST POSITION BEFORE BECOMING TOWNSHIP POLICE CHIEF UPON HIS REMOVAL AS CHIEF."

SECOND ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED BY HOLDING THAT THIS COURT OF APPEALS HAD HELD THAT KELLY BLAIR WAS NOT TERMINATED FROM HIS POSITION AS

POLICE CONSTABLE WITH THE SUGARCREEK TOWNSHIP POLICE DEPARTMENT.”

THIRD ASSIGNMENT OF ERROR

“THE TRIAL COURT ERRED BY HOLDING THAT THE POSITION OF POLICE CONSTABLE WITH THE SUGARCREEK TOWNSHIP POLICE DEPARTMENT WAS AN UNPAID POSITION.”

We previously held:

“It is undisputed that Blair served as chief of police at the pleasure of the Trustees, R.C. 505.49(B), and therefore the Trustees could remove Blair from that position as they did, without prior notice or hearing. Courts have held that, in that event, any separate status the employee enjoys as a certified police officer is nevertheless subject to a relevant notice and hearing requirement. *Staley v. St. Clair Twp. Bd. Of Trustees*, (Dec. 18, 1987), *Columbiana App. No. 87-C-44*. Absent a satisfaction of such requirements, the employee must be retained in that other position. *Smith v. Fryfogle* (1982), 70 Ohio St.2d 58.” *Blair, supra*, at ¶16.

The notice and hearing requirements to which we referred are codified in R.C. 509.01(B), which provides for designation as police constable persons who are certified as having completed an approved basic training program, and that such constables may be removed or suspended only under the conditions and by the procedures in R.C. 505.491 to 505.495. Those sections set out basic due process requirements of notice and opportunity to be heard and require findings that support the action taken. The parties agreed with the magistrate at the March 2007 hearing that its purpose was to take “evidence relating to whether or not Kelly Blair is a constable or police chief.” (Tr. pg. 3). The trustees, pursuant to R.C. 505.49(B)(2), chose to appoint Blair chief and, later, to

designate him as a constable (he had not previously been designated as constable). His position as a constable does not exist necessarily because he was appointed chief, like some sort of emolument. Regardless, since R.C. 509.01(B) and R.C. 505.49(B)(3) are identically worded, it does not matter whether his designation as a police constable was pursuant to R.C. 509.01(B) or R.C. 505.49(B)(2). He still is entitled to the procedures set forth in R.C. 505.491 and 505.495 before he can be terminated as a constable. It is not disputed that Blair was not provided with such statutory due process.

This, however, is not the issue before us since we found in *Blair I*, at ¶17, that Blair was never terminated as a constable. Thus we reversed the magistrate and court's decisions that he was terminated, but that it had been done improperly for failure to comply with R.C. 509.01.

On remand, the magistrate, probably out of an abundance of caution, allowed evidence whether Blair was constructively discharged as a constable, even if he had not been discharged as a constable as a result of a formal Resolution by the trustees. The arcane intricacies of bar, res judicata, collateral estoppel, claim or issue preclusion, or law of the case aside, the question of whether Blair had been terminated - by any means - has been argued and decided. To the extent Appellant then or now argues that he had been constructively terminated, as opposed to a termination by a Township Resolution, the question was resolved by *Blair I*. Appellant's Second Assignment of Error is overruled.

Further, based on the record of the hearings, we cannot say that the magistrate and judge's finding that no compensation attached to the constable position was an abuse of discretion. Appellant's Third Assignment of Error is overruled.

The First Assignment of Error asserts that the court after remand erred by not

finding that Blair was entitled to reinstatement as a certified police officer with the township when he was terminated as chief of police. The Appellant argues that any automatic surrender, upon being appointed chief, of the tenure and due process protections that a certified police officer enjoys creates a "destructive disincentive for experienced police officers ever to accept such a promotion." (Appellant's Brief, p. 14). He cites *Staley v. St. Clair Township Board of Trustees* (December 15, 1987), Columbiana County No. 87-C-44 for the principle that "a patrolman, other police district employee, or police constable. . . may be removed or suspended only under the conditions and by the procedures. . . set forth in the Revised Code" which, it is agreed, were not followed in Blair's case.

The first part of the First Assignment states that Blair's "Amended Notice of [Administrative] Appeal was sufficient to raise his status as a certified police officer." His brief, pg. 7, argues that "paragraph 8, references both Mr. Blair's status as a constable and a certified officer. . ." and that he was "removed from office in violation of the law." This, according to the brief, "is, in a nutshell, the entire purpose of Kelly Blair's appeal after remand."

Blair's Amended Notice of Administrative Appeal appeals "from the decision of the Trustees enforced on September 18, 2006, terminating Appellant's employment." As we stated in *Blair I*, Resolution 2006-09-18-12, adopted on September 18, 2006, refers to Blair's service "as an unclassified employee of Sugarcreek Township in the capacity of Chief of Police since April 25, 1998. . . [and determines] to remove Kelly E. Blair as Chief of Police." *Id.* ¶15. The only decision on September 18, that Blair could administratively appeal, therefore, was his termination as chief. Believing the Township had also terminated him as a constable, Blair appealed that action (and we subsequently held that

11:04:1226

he was not terminated as a constable).

Further, in his Amended Notice of Administrative Appeal, paragraph 7, he states he "is a police constable who was awarded a certificate attesting to his satisfactory completion of an approved basic training program. . . [and thus] he was named constable by Sugarcreek Township Trustees in 1998. . . [and that he] has been removed from office. . . without following the procedures set forth in the Ohio Revised Code for constables." Paragraph 8 is identical with the exception of the last sentence which alleges that he "has been terminated. . ." whereas paragraph 7 says he "has been suspended and will be terminated. . ."

There is no reference in the Notice to "certified police officer" or "police officer." It does mention that he completed a basic training program, but such completion does not ipso facto make one a "certified police officer," or even a "police officer," let alone one that was employed and terminated as such by the township, and is just as consistent with his appealed termination as a constable. Similarly, the allegation that he was wrongfully "removed from office" can only be read as referencing his position as a "police constable." A further indication of grounds of the original administrative appeal is that at the 2007 hearings, Blair testified as to his belief that when he became chief he gave up any position in the classified service as a certified police officer employee of the township. He stated that he believed "that becoming a constable gave [him] job security with the township" (Tr. pg. 34) and that "every chief I worked for told me to make sure that if you become chief you become a constable. That is the only protection you have." (Tr. pg. 34).¹ Thus, if we

¹This testimony was "clarified" in the 2009 hearings when Appellant testified that his belief that he had the right to return to his old job figured into his decision to take the job as chief (April 30, 2009, transcript pg. 35).

stopped here, we would hold that Blair did not administratively appeal anything regarding his status as a former certified police officer with Sugarcreek Township.

The confusion arises from dicta in *Blair I*: "Blair argues that he enjoys certain rights as a certified police constable and/or former certified police officer of which the Trustees' action deprived him. That contention involves issues the trial court did not reach. Blair may present evidence on those matters in the course of future proceedings." *Id.* ¶18. Construing this broadly, the parties, on remand, presented evidence and briefs regarding whether Blair had any rights as a "former certified police officer."

Removal or suspension of a "certified police officer" is governed by R.C. 505.49(B)(3):

"Except as provided in division (D) of this section, a patrol officer, other police district employee, or police constable, who has been awarded a certificate attesting to the satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code. Any other patrol officer, police district employee, or police constable shall serve at the pleasure of the township trustees. In case of removal or suspension of an appointee by the board of township trustees, that appointee may appeal the decision of the board to the court of common pleas of the county in which the district is situated to determine the sufficiency of the cause of removal or suspension. The appointee shall take the appeal within ten days of written notice to the appointee of the decision of the board."

R.C. 505.49(C)(1) provides that division (B) does not apply to larger townships that

11-05-1228

have a civil service commission; instead such townships are required to comply with the procedures in Chapter 124 of the Revised Code. R.C. 505.49(C)(2) then provides that, in such a township, a person appointed as chief who is removed or who resigns "shall be entitled to return to the classified service on the township police department, in the position that person held previous to the person's appointment as chief of police." Both parties agree that Sugarcreek is not such a township; therefore, R.C. 505.49(B)(3) governs the return of a certified police officer to Sugarcreek Township.

If the certified police officer employed by a township as such who is appointed chief is always still a certified police officer employed by a township as such even when employed as chief of police, there is no need for R.C. 505.49(C), regardless of the size of the township. The statute gives a right to a chief in larger townships to return to his or her position "held previous" which implies that as chief he or she does not hold the position. Further, even this right is not imposed by the legislation on smaller townships without a civil service commission.

To the extent the Assignments of Error raise issues concerning Blair's alleged current status as a "certified police officer," Appellant was a former certified police officer employee with the township and is not automatically entitled to return to the classified service in the position that he held previous to his appointment as chief.

The judgment of the trial court will be affirmed.

FAIN, J.,

GRADY, P.J., dissenting:

In the prior appeal, *Blair v. Board of Trustees of Sugarcreek Township*, Greene App.

11-04-1229

No. 08CA16, 2008-Ohio-5640 ("Blair I"), we found that, Plaintiff-Appellant Blair had not been removed or suspended from his position as a police constable. That finding reflected the fact that the resolution of Defendant-Appellee Board of Trustees of Sugarcreek Township (the "Board") removing Blair from his position as chief of police made no reference to Blair's position as a constable.

On remand, the trial court found that Blair, even if he was not terminated from his constable's position, has no right that can be vindicated by proceedings pursuant to R.C. 505.491 to 505.495, to which Blair insists he is entitled pursuant to R.C. 509.01(B), because Blair benefitted from no compensation or other emolument of office from his constable's position. In the present appeal, the Board agrees with that finding, and points out that Blair's designation as a constable was done by the Board pursuant to R.C. 505.49(B)(2), adjunct to his appointment as chief of the township police district. The Board argues that Blair's removal as chief therefore encompassed his removal from his constable's position.

R.C. 509.01(B) provides that persons designated police constables who also hold a training certificate, as Blair does, "may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code." The adjunct designation of police chiefs as constables authorized by R.C. 505.49(B)(2) incorporates the protections of that section by reference with respect to removal or suspension of constables designated pursuant to R.C. 505.49(B)(2). Those same protections with respect to suspension or removal also appear in R.C. 505.49(B)(3).

R.C. 505.491 states:

"Trustees to prefer charges against delinquent police personnel

"Except as provided in division (D) of section 505.49 or in division (C) of section 509.01 of the Revised Code, if the board of trustees of a township has reason to believe that a chief of police, patrol officer, or other township police district employee appointed under division (B) of section 505.49 of the Revised Code or a police constable appointed under division (B) of section 509.01 of the Revised Code has been guilty, in the performance of the official duty of that chief of police, patrol officer, other township police district employee, or police constable, of bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, neglect of duty, gross immorality, habitual drunkenness, incompetence, or failure to obey orders given that person by the proper authority, the board immediately shall file written charges against that person, setting forth in detail a statement of the alleged guilt and, at the same time, or as soon thereafter as possible, serve a true copy of those charges upon the person against whom they are made. The service may be made on the person or by leaving a copy of the charges at the office or residence of that person. Return of the service shall be made to the board in the same manner that is provided for the return of the service of summons in a civil action."

In *Smith v. Fryfogle* (1982), 70 Ohio St.2d 58, the Supreme Court considered the predecessor version of R.C. 505.49(C)(2), which contained the same reference to the protections afforded by R.C. 505.491 to 505.495. *Smith* distinguished the "quasi-judicial" action of a board of trustees in removing or suspending a police chief for the causes in R.C. 505.491 from the board's exercise of its "executive function" when removing a chief who serves at the pleasure of the board, without cause. *Smith* states: "R.C. 505.491 applies to the chief, among others, but only when the trustees have reason to believe the officer is guilty of neglect of duty or other named offense." *Id.*, at 60. (Emphasis supplied.)

The statutory provision that township chiefs of police serve at the pleasure of the board of trustees in R.C. 505.49(B)(2) does not, by its terms, extend to constables. However, the holding in *Smith* is not limited to removal or suspension of chiefs. With respect to the applicability of R.C. 505.491 to 505.495, *Smith* applies to chiefs, "among others." Those others reasonably include any other employee of the police district, including police constables. As a result, the quasi-judicial causes and procedures in R.C. 505.491 to 505.495 apply to the removal or suspension of such persons only when done for cause, specifically the causes in R.C. 505.491. Any other removal or suspension of an officer by the board is an executive function, to which those sections have no application.

Blair's contention that his removal from his position as police constable, whether actual or constructive, may only be done pursuant to R.C. 505.491 to 505.495, is inconsistent with and contrary to the holding in *Smith*. Furthermore, it could lead to absurd results the General Assembly never intended. R.C. 505.49(B)(92) directs a township board of trustees to "appoint a chief of police for the district, determine the number of patrol officers and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the police district." That mandate would authorize a board to order a reduction in force for fiscal reasons, terminating some of its employees. To limit the board's power to do that by requiring the board to then comply with the quasi-judicial procedures in R.C. 505.491 to 505.495 governing removal or suspension for cause would unreasonably hamstring the board in its exercise of the executive authority conferred by R.C. 505.49(B)(2).

Having said all of that, we remain confronted by the Board's failure to terminate Blair from his constable's position. Notwithstanding the fact that Blair was so designated

pursuant to R.C. 505.49(B)(2), adjunct to his appointment as chief, Blair's termination as chief did not likewise terminate his constable's position. Each position is recognized by statute, and each therefore reasonably requires a termination from that position to be effective. The Board's failure to terminate Blair from his constable's position not only leaves him in a state of limbo in that regard. It also presents a risk of liability for the Board should Blair exercise the remaining authority the Board conferred on him in some improper way. It could conceivably also work to the Board's detriment by extending the basis for calculating Blair's retirement benefits and the Board's contribution to his public retirement account.

For the foregoing reasons, I would remand the case to the Board for the purpose of considering whether the Board should adopt a resolution terminating Blair from his designated position as a police constable.

.....

Copies mailed to:

Dwight D. Brannon
Matthew C. Schultz
Thomas C. Miller
Edward J. Dowd
Dawn M. Frick
Hon. Michael Buckwalter

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COURT OF APPEALS
SECOND DISTRICT

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

KELLY BLAIR

Plaintiff-Appellant

v.

BOARD OF TRUSTEES
OF SUGARCREEK TOWNSHIP, et al.

Defendant-Appellee

C.A. CASE NO. 2010 CA 3

T.C. NO. 06CV811

FINAL ENTRY

Pursuant to the opinion of this court rendered on the 8th day of
April, 2011, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

THOMAS J. GRADY, Presiding Judge

Mike Fain

MIKE FAIN, Judge

Jeffrey E. Froelich
JEFFREY E. FROELICH, Judge

11-104-1234

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THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT

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Hon. Michael Buckwalter
Common Pleas Court
45 N. Detroit Street
Xenia, Ohio 45385

11-04-1235

STATE OF OHIO, COLUMBIANA COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

IN THE MATTER OF
STEPHEN A. STALEY,

PLAINTIFF-APPELLEE

- VS -

THE ST. CLAIR TOWNSHIP BOARD
OF TRUSTEES, ET AL,

DEFENDANTS-APPELLANTS



OPINION

CASE NO. 87-C-44

DEC 15 1987

Columbiana Co., Ohio

CARL L. STACEY, Clerk

CHARACTER OF PROCEEDINGS: Civil Appeal from the Common Pleas Court, Case No. 87-CIV-547

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellee: James T. Hartford
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East Palestine, Ohio 44413

For Defendant-Appellant: Robert Herron
Prosecuting Attorney
Andrew A. Beech
Asst. Prosecuting Attorney
Columbiana County Courthouse
Lisbon, Ohio 44432

Hon. Edward A. Cox,
Hon. Joseph E. O'Neill,
Hon. Joseph Donofrio, JJ.

Dated: December 15, 1987

COX, P.J.

This is a properly perfected appeal from a judgment of the Columbiana County Court of Common Pleas in favor of plaintiff-appellee, Stephen Staley. The court reversed a decision by defendant-appellant, St. Clair Township Board of Trustees, which terminated appellee's employment with the township.

From January, 1986 to May 5, 1987, Stephen Staley served as St. Clair Township Chief of Police. Before 1986, the township employed appellee as a patrolman and, later, as a sergeant with the police department, and appellee had been awarded a certificate attesting to satisfactory completion of an approved Ohio Peace Officer basic training program as required by R.C. 109.77.

On April 29, 1987, the Board of Trustees called a special meeting set for May 5, 1987, to take orders and payment for road oil. At this special meeting, the Board held an executive session to discuss personnel, and terminated appellee's employment with St. Clair Township. The Board notified appellee of his termination in a letter dated May 5, 1987.

Appellee appealed the Board's decision to the Columbiana County Court of Common Pleas. That court reversed the Board's decision and reinstated appellee.

Appellant filed a timely notice of appeal to this Court on September 23, 1987. Following this Court's denial for a stay of execution of judgment, the matter was ordered to proceed on appeal in expedited form.

Appellant's two assignments of error are stated in the form of legal propositions:

The actions of the St. Clair Township Board of Trustees terminating the employment of Stephen A. Staley, taken at the special meeting of May 5, 1987, were valid and in compliance with section 121.22 of the Ohio Revised Code.

R.C. 121.22 states, in part:

"(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted by law."

Subsection (F) of R.C. 121.22 provides that "[a] public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action."

Appellant maintains that the Board provided the required notice when it announced on April 28 that it would hold a special meeting on May 5 to purchase road oil. According to appellant, once a special meeting has been announced, the Board may hold an executive session for another purpose. Appellee disagrees, but both parties rely on R.C. 121.22(G), which states:

"(G) The members of a public body may hold an executive session only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

"(1) Unless the public employee, official, licensee, or regulated individual requests a public hearing to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official,

licensee, or regulated individual. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of his official duties or for his removal from office."

Appellant submits that R.C. 121.22(G) allows the Board to announce a special meeting for one purpose and then to hold an executive session for the purpose of discussing personnel. However, the statute simply allows the Board to hold an executive session for the purpose of discussing personnel "[u]nless the public employee * * * requests a hearing * * *." Without prior notice, this limitation would be meaningless. Moreover, appellant's interpretation of R.C. 121.22(G) contradicts subsection (A) of this statute. Appellant misconstrued R.C. 121.22.

II

The actions of the St. Clair Township Board of Trustees terminating the employment of Stephen A. Staley were in compliance with the procedures outlined in sections 505.49 to 505.495 of the Ohio Revised Code.

Appellant argues that Smith v. Eryfogle (1982), 70 Ohio St. 2d 58 supports this second proposition. In Smith, the Knox Township Trustees removed Charles E. Smith as chief of police and requested him to continue to serve the township as a certified peace officer. The Trustees demoted Smith at a public meeting without affording him the statutory due process procedure outlined in R.C. 505.49.1 - 505.49.5.

The Ohio Supreme Court upheld Smith's demotion. The Court concluded that this procedure need only be followed to remove a police chief where misconduct is alleged. Otherwise,

R.C. 505.49(A) permits the township trustees to remove the chief at their discretion.

Appellee admits that the Board may remove him as chief of police, but argues that because he was a certified peace officer, the Board could not properly terminate his employment with the township without complying with R.C. 505.49.1 - 505.49.5. Smith, supra did not settle this issue because the trustees in that case allowed the former chief to continue his employment as a peace officer.

R.C. 505.49(A), however, supports appellee's argument. The statute provides, in part:

"A patrolman, other police district employee, or police constable, who has been awarded a certificate attesting to satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491[505.49.1] to 505.495[505.49.5] of the Revised Code." (Emphasis added)

R.C. 505.49(A) also provides that the chief of police serves at the Board's pleasure. The Board must only follow the procedure set forth in R.C. 505.491 to 505.495 either to remove the police chief where misconduct is alleged, or to remove or suspend a certificated police district employee. Here, appellee is not accused of misconduct. Mr. Staley is a certificated peace officer. The Board may terminate appellee's employment as a township police officer only under the conditions set forth in R.C. 505.491-505.495.

For the foregoing reasons, the judgment of the trial court is affirmed.

O'Neill, J., concurs.

Donofrio, J., concurs.

APPROVED:



EDWARD A. COX, PRESIDING JUDGE

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

KELLY BLAIR

Plaintiff-Appellant

v.

BOARD OF TRUSTEES
OF SUGARCREEK TOWNSHIP, et al.

Defendant-Appellee

C.A. CASE NO. 2010 CA 3

T.C. NO. 06CV811

.....
DECISION AND ENTRY

Rendered on the 27th day of May, 2011.
.....

DWIGHT D. BRANNON, Atty. Reg. No. 0021657 and MATTHEW C. SCHULTZ, Atty. Reg. No. 0080142, 130 West Second Street, Suite 900, Dayton, Ohio 45402
Attorney for Plaintiff-Appellant

THOMAS C. MILLER, Atty. Reg. No. 0075960, Civil Division Chief, Greene County Prosecutor's Office, 55 Greene Street, First Floor, Xenia, Ohio 45385 and EDWARD J. DOWD, Atty. Reg. No. 0018681 and DAWN M. FRICK, Atty. Reg. No. 0069068, One Prestige Place, Suite 700, Miamisburg, Ohio 45342
Attorneys for Defendant-Appellee

.....
PER CURIAM:

Pursuant to App.R. 25, plaintiff-appellant, Kelly Blair, moves this court for an order

certifying a conflict between our decision in *Blair v. Board of Trustees of Sugarcreek Township*, Greene App. No. 2010 CA 3, 2011-Ohio-1725, (*Blair II*) and the decision rendered by the Seventh District in *Staley v. St. Clair Township Board of Trustees* (Dec. 15, 1987), 7th Dist. No. 87-C-44. The appellee, Board of Trustees of Sugarcreek Township, has filed a memorandum in opposition to the appellant's motion.

Section 3(B)(4), Article IV of the Ohio Constitution governs motions seeking an order to certify a conflict and provides: "Whenever the judges of a Court of Appeals find that a judgment upon which they have agreed is in conflict with the judgment pronounced upon the same question by any other Court of Appeals of this state, the judges shall certify the record of the case to the Supreme Court for review and final determination." See, also, *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 1993-Ohio-223, syllabus, rehearing denied by *Whitelock v. Cleveland Clinic Foundation* (1993), 67 Ohio St.3d 1420.

At least three conditions must be met before and during the certification of a case to the Supreme Court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. "First, the certifying court must find that its judgment is in conflict with the judgment of the Court of Appeals of another district and the assigned conflict must be upon the same question. Second, the alleged conflict must be on a rule of law -- not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district Courts of Appeals." *Id.* at 596.

Additionally, factual distinctions between cases are not a basis upon which to certify a conflict. *Id.* at 599. "For a Court of Appeals to certify a case as being in conflict with another case, it is not enough that the reasoning expressed in the opinions of the two

Courts of Appeals be inconsistent; the judgments of the two courts must be in conflict.”
State v. Hankerson (1989), 52 Ohio App.3d 73, ¶ 2 of the syllabus.

Appellant proposes the following question be certified:

“Under R.C. 505.49(B), does a township chief of police, who moved from a position as a certified township police officer to the position as township chief of police, have the right to keep his employment as a certified township police officer after being removed as township chief of police other than for cause by the township commission, even if R.C. 505.49(C) does not apply to the township?”

The appellee in its memorandum in opposition to the motion to certify, suggests that our previous decision did not specifically rule regarding appellant’s status as a former certified police officer, but that this was simply “discussed” in our opinion. Specifically, the appellee states “this court determined that ‘Blair did not administratively appeal anything regarding his status as a former certified police officer with Sugarcreek Township’ *Blair II* at ¶ 18.” This excerpt is misleading. What we said, in the clause immediately preceding that portion of the sentence quoted by the appellee, is that “[t]hus, if we stopped here, . . .” The fact is we did not stop there, but went on to hold that appellant was a former certified police officer with the township and is not automatically entitled to return to the classified service in the position that he held previous to his appointment as chief. *Id.* ¶ 24.

In *Staley*, the township terminated the employment of Staley who was then serving as chief; prior to service as chief he had been a patrolman and sergeant. Staley argued that while the board may remove him as chief without cause, “because he was a certified police officer, the board could not properly terminate his employment with the township without complying with R.C. 505.491, 505.495.” *Staley*, supra. The court held that since

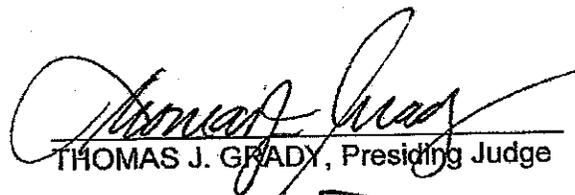
Staley was not accused of misconduct and "is a certified police officer," the Board may terminate his employment as a township police officer only under the conditions set forth in R.C. 505.491-505.495.

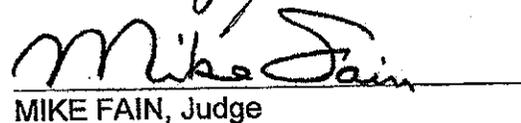
Although our holding in *Blair I*¹ was that Blair was never terminated as a constable, we did hold in *Blair II* that Blair, who was a certified police officer prior to his appointment and subsequent removal as chief, was not automatically entitled to return to his previous position. This appears to be in conflict with the holding of *Staley* that, absent termination pursuant to R.C. 505-491-495, the terminated chief was entitled to remain a certified police officer.

We therefore certify the following rule of law as being in conflict with the judgment on the same question by another district Court of Appeals:

"A certified township police officer who is appointed chief and then is terminated as chief, other than for cause in a township where R.C. 505.49(C) is not applicable, does not have the automatic right to return to the position he held prior to his appointment as chief."

IT IS SO ORDERED.


THOMAS J. GRADY, Presiding Judge


MIKE FAIN, Judge


JEFFREY E. FROELICH, Judge

¹*Blair v. Board of Trustees of Sugarcreek Township*, Greene App. No. 08CA16, 2008-Ohio-5640.

Copies mailed to:

Dwight D. Brannon
Matthew C. Schultz
Thomas C. Miller
Edward J. Dowd
Dawn M. Frick
Hon. Michael Buckwalter

ORIGINAL

IN THE SUPREME COURT OF OHIO

KELLY BLAIR,

Appellant,

vs.

BOARD OF TRUSTEES OF
SUGARCREEK TOWNSHIP,

Appellee.

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CASE NO. 11-0960

ON APPEAL FROM THE SECOND
DISTRICT COURT OF APPEALS
FOR GREENE COUNTY, OHIO
CASE NO. 2010-CA-0003

NOTICE OF CERTIFIED CONFLICT OF APPELLANT KELLY BLAIR

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FILED
JUN 08 2011
CLERK OF COURT
SUPREME COURT OF OHIO

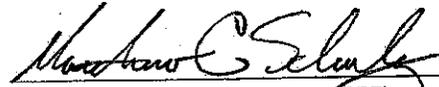
NOTICE OF CERTIFIED CONFLICT

Now comes Appellant, Kelly Blair, and hereby gives notice, pursuant to S. Ct. Prac. R. 4.1, of his appeal of the Second District Court of Appeals' decision in *Blair v. Board of Trustees of Sugarcreek Township*, 2nd Dist. No. 2010-CA-0003, 2011-Ohio-1725. The Second District Court of Appeals, in a Decision and Entry dated May 27, 2011, has certified a conflict between its decision in *Blair* and the decision of the Seventh District Court of Appeals in *Staley v. St. Clair Township Bd. of Trustees* (Dec. 15, 1987), 7th Dist. No. 87-C-44; on the following rule of law:

“A certified township police officer who is appointed chief and then is terminated as chief, other than for cause in a township where R.C. 505.49(C) is not applicable, does not have the automatic right to return to the position he held prior to his appointment as chief.”

Appellant respectfully requests that this Supreme Court accept jurisdiction over this appeal, and reverse the decision of the Second District Court of Appeals in this case. Appellant further requests that this appeal be consolidated with Appellant's discretionary appeal of the decision of the Second District Court of Appeals, currently awaiting a decision on jurisdiction under Case No. 2011-0864. A copy of the Decision and Entry granting the Motion to Certify a Conflict is attached, as well as the Second District Court of Appeals' decision in *Blair*, and the Seventh District Court of Appeals' decision in *Staley*.

Respectfully submitted,



Dwight D. Brannon (0021657)

Matthew C. Schultz (0080142)

Attorneys for Plaintiff

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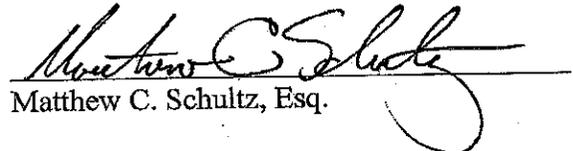
E-Mail: dbrannon@branlaw.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing was served on the following by regular U.S. Mail, this 7th day of June, 2011.

Elizabeth A. Ellis, Esq.
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Xenia, Ohio 45385

Edward J. Dowd, Esq.
Dawn M. Frick, Esq.
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Dayton, Ohio 45423



Matthew C. Schultz, Esq.

FILED

AUG 24 2011

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Kelly Blair

Case No. 2011-0960

v.

ENTRY

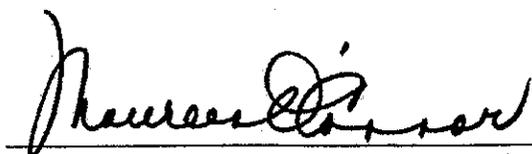
Board of Trustees of Sugarcreek Township
et al.

This cause is pending before the Court on the certification of a conflict by the Court of Appeals for Greene County. On review of the order certifying a conflict, it is determined that a conflict exists. The parties are to brief the issue stated on page 4 in the court of appeals' Decision and Entry filed May 27, 2011, as follows:

"A certified township police officer who is appointed chief and then is terminated as chief, other than for cause in a township where R.C. 505.49(C) is not applicable, does not have the automatic right to return to the position he held prior to his appointment as chief."

It is ordered by the Court that the Clerk shall issue an order for the transmittal of the record from the Court of Appeals for Greene County.

(Greene County Court of Appeals; No. 2010CA3)



Maureen O'Connor
Chief Justice



Page's Ohio Revised Code Annotated:

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Current through Legislation passed by the 129th Ohio General Assembly

and filed with the Secretary of State through file 47

*** Annotations current through July 22, 2011 ***

TITLE 5. TOWNSHIPS

CHAPTER 505. TRUSTEES

TOWNSHIP POLICE DISTRICTS

Go to the Ohio Code Archive Directory

ORC Ann. 505.49 (2011)

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE
DATES.

ORC Ann. 505.49

§ 505.49. Contract for police protection; status of police department members [Contingent amendment--see Editor's note]

(A) As used in this section, "felony" has the same meaning as in section 109.511 of the Revised Code.

(B) (1) The township trustees of a township police district, by a two-thirds vote of the board, or a joint police district board, by majority vote of its members, may adopt rules necessary for the operation of the township or joint police district, including a determination of the qualifications of the chief of police, patrol officers, and others to serve as members of the district police force.

(2) Except as otherwise provided in division (E) of this section and subject to division (D) of this section, the township trustees of a township police district, by a two-thirds vote of the board or the joint police district board, by majority vote of its members, shall appoint a chief of police for the district, determine the number of patrol officers and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the township or joint police district. The chief of police of the district shall serve at the pleasure of the township trustees or the joint police district board and shall appoint patrol officers and other personnel that the district may require, subject to division (D) of this section and to the rules and limits as to qualifications, salary ranges, and numbers of personnel established by the board of township trustees or the joint police district board. The township trustees may include in the township police district and under the direction and control of the chief of police any constable appointed pursuant to section 509.01 of the Revised Code, or may designate the chief of police or any patrol officer appointed by the chief of police as a constable, as provided for in section 509.01 of the Revised Code, for the township police district.

(3) Except as provided in division (D) of this section, a patrol officer, other police district employee, or police constable, who has been awarded a certificate attesting to the satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code. Any other patrol officer, police district employee, or police constable shall serve at the pleasure of the township trustees or joint police district board. In case of removal or suspension of an appointee by the board of township trustees of a township police district or the joint police district board, that appointee may appeal the decision of either board to the court of common pleas of the county in which the district is situated to determine the sufficiency of the cause of removal or suspension. The appointee shall take the appeal within ten days of written notice to the appointee of the decision of the board.

(C) (1) Division (B) of this section does not apply to a township that has a population of ten thousand or more persons residing within the township and outside of any municipal corporation, that has its own police department employing ten or more full-time paid employees, and that has a civil service commission established under division (B) of section 124.40 of the Revised Code. The township shall comply with the procedures for the employment, promotion, and discharge of police personnel provided by Chapter 124. of the Revised Code, except as otherwise provided in divisions (C)(2) and (3) of this section.

(2) The board of township trustees of the township may appoint the chief of police, and a person so appointed shall be in the unclassified service under section 124.11 of the Revised Code and shall serve at the pleasure of the board. A person appointed chief of police under these conditions who is removed by the board or who resigns from the position shall be entitled to return to the

ORC Ann. 505.49

classified service in the township police department, in the position that person held previous to the person's appointment as chief of police.

(3) The appointing authority of an urban township, as defined in section 504.01 of the Revised Code, may appoint to a vacant position any one of the three highest scorers on the eligible list for a promotional examination.

(4) The board of township trustees of a township described in this division shall determine the number of personnel required and establish salary schedules and conditions of employment not in conflict with Chapter 124. of the Revised Code.

(5) Persons employed as police personnel in a township described in this division on the date a civil service commission is appointed pursuant to division (B) of section 124.40 of the Revised Code, without being required to pass a competitive examination or a police training program, shall retain their employment and any rank previously granted them by action of the township trustees or otherwise, but those persons are eligible for promotion only by compliance with Chapter 124. of the Revised Code.

(6) This division does not apply to constables appointed pursuant to section 509.01 of the Revised Code. This division is subject to division (D) of this section.

(D) (1) The board of township trustees or a joint police district board shall not appoint or employ a person as a chief of police, and the chief of police shall not appoint or employ a person as a patrol officer or other peace officer of a township police district, township police department, or joint police district on a permanent basis, on a temporary basis, for a probationary term, or on other than a permanent basis if the person previously has been convicted of or has pleaded guilty to a felony.

(2) (a) The board of township trustees or joint police district board shall terminate the appointment or employment of a chief of police, patrol officer, or other peace officer of a township police district, township police department, or joint police district who does either of the following:

(i) Pleads guilty to a felony;

(ii) Pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in division (D) of section 2929.43 of the Revised Code in which the chief of police, patrol officer, or other peace officer of a township police district, township police department, or joint police district agrees to surrender the certificate awarded to that chief of police, patrol officer, or other peace officer under section 109.77 of the Revised Code.

(b) The board shall suspend the appointment or employment of a chief of police, patrol officer, or other peace officer of a township police district, township police department, or joint police district who is convicted, after trial, of a felony. If such chief of police, patrol officer, or other peace officer files an appeal from that conviction and the conviction is upheld by the highest court to which the appeal is taken, or, if no timely appeal is filed, the board shall terminate the appointment or employment of that chief of police, patrol officer, or other peace officer. If the chief of police, patrol officer, or other peace officer of a township police district, township police department, or joint police district files an appeal that results in that chief of police's, patrol officer's, or other peace officer's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against the chief of police, patrol officer, or other peace officer, the board shall reinstate that chief of police, patrol officer, or other peace officer. A chief of police, patrol officer, or other peace officer who is reinstated under division (D)(2)(b) of this section shall not receive any back pay unless the conviction of that chief of police, patrol officer, or other peace officer of the felony

ORC Ann. 505.49

was reversed on appeal, or the felony charge was dismissed, because the court found insufficient evidence to convict the chief of police, patrol officer, or other peace officer of the felony.

(3) Division (D) of this section does not apply regarding an offense that was committed prior to January 1, 1997.

(4) The suspension or termination of the appointment or employment of a chief of police, patrol officer, or other peace officer under division (D)(2) of this section shall be in accordance with Chapter 119. of the Revised Code.

(E) The board of township trustees or the joint police district board may enter into a contract under section 505.43 or 505.50 of the Revised Code to obtain all police protection for the township police district or joint police district from one or more municipal corporations, county sheriffs, or other townships. If the board enters into such a contract, subject to division (D) of this section, it may, but is not required to, appoint a police chief for the district.

(F) The members of the police force of a township police district of a township, or of a joint police district board comprised of a township, that adopts the limited self-government form of township government shall serve as peace officers for the township territory included in the district.

(G) A chief of police or patrol officer of a township police district, township police department, or joint police district may participate, as the director of an organized crime task force established under section 177.02 of the Revised Code or as a member of the investigatory staff of that task force, in an investigation of organized criminal activity in any county or counties in this state under sections 177.01 to 177.03 of the Revised Code.

(Amended House Bill No. 513)

AN ACT

To amend sections 124.01, 124.03, 124.06, 124.09, 124.11, 143.27, 143.29, 124.40, 124.41, 124.43, 124.44, 124.45, 124.47, 124.49, 124.50, 124.55, 124.56, 124.57, 124.60, 124.62, 505.38, 505.49, and 505.491; to amend for the purpose of adopting new section numbers as indicated in parentheses, sections 143.27 (124.34) and 143.29 (124.38) of the Revised Code to allow certain townships to establish civil service commissions for the employment, promotion, and discharge of township policemen and firemen.

SECTION 1. That sections 124.01, 124.03, 124.06, 124.09, 124.11, 143.27, 143.29, 124.40, 124.41, 124.43, 124.44, 124.45, 124.47, 124.49, 124.50, 124.55, 124.56, 124.57, 124.60, 124.62, 505.38, 505.49, and 505.491 be amended, and that sections 143.27 (124.34) and 143.29 (124.38) of the Revised Code be amended for the purpose of adopting new section numbers as indicated in parentheses to read as follows:

Sec. 124.01. As used in [~~sections 124.01 to 124.64~~] CHAPTER 124. 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, general health districts, and city school districts thereof.

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

(C) "Classified service" [~~signifies~~] MEANS the competitive classified civil service of the state, the several counties, cities, city

health districts, general health districts, [and] city school districts thereof, AND CIVIL SERVICE TOWNSHIPS.

(D) "Appointing authority" [signifies] MEANS the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board or institution.

(E) "Commission" [signifies] MEANS the municipal civil service commission of any city.

(F) "Employee" [signifies] MEANS any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer.

(G) "CIVIL SERVICE TOWNSHIP" MEANS ANY TOWNSHIP WITH A POPULATION OF TEN THOUSAND OR MORE PERSONS RESIDING WITHIN THE TOWNSHIP AND OUTSIDE ANY MUNICIPAL CORPORATION, WHICH HAS A POLICE OR FIRE DEPARTMENT OF TEN OR MORE FULL-TIME PAID EMPLOYEES, AND WHICH HAS A CIVIL SERVICE COMMISSION ESTABLISHED UNDER DIVISION (B) OF SECTION 124.40 OF THE REVISED CODE.

Sec. 124.03. The state personnel board of review shall exercise the following powers and perform the following duties of the department of administrative services:

(A) Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services 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 administrative services, as the case may be, and its decision is final;

(B) Hear appeals, as provided by law, of appointing authorities from final decisions of the director of administrative services relative to the classification or reclassification of any position or positions in the classified state service under the jurisdiction of such appointing authority; the board may affirm, disaffirm, or modify the decisions of the director of administrative services, and its decision is final;

(C) To exercise the authority provided for by section 124.40 of the Revised Code, for appointment, removal, and supervision of municipal AND CIVIL SERVICE TOWNSHIP civil service commissions;

(D) To appoint a secretary and such other employees necessary in the exercise of the powers and performance of the duties and functions which the board is by law authorized and required to exercise and perform and to prescribe the duties of such secretary and employees;

(E) To maintain a journal which shall be open to public inspection, in which it shall keep a record of all of its proceedings

and of the vote of each of its members upon every action taken by it;

(F) To adopt and promulgate rules and regulations, in accordance with ~~[the provisions of sections 119.01 to 119.13]~~ CHAPTER 119. of the Revised Code, relating to the procedure of the board in administering the laws which it has authority or duty to administer and for the purpose of invoking the jurisdiction of the board in hearing appeals of appointing authorities and employees in matters set forth in divisions (A) and (B) of this section;

(G) To subpoena and require the attendance and testimony of witnesses and the production of books, papers, public records, and other documentary evidence pertinent to any matter which it has authority to investigate, inquire into or hear in the same manner and to the same extent as provided by division (E) of section 124.09 of the Revised Code and all witness fees shall be paid in the manner set forth in said paragraph.

Sec. 124.06. No person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted, or reduced as an officer or employee in the civil service, in any manner or by any means other than those prescribed in ~~[sections 124.01 to 124.64 of the Revised Code]~~ THIS CHAPTER, and the rules of the director of administrative services or the municipal OR CIVIL SERVICE TOWNSHIP civil service commission within their respective jurisdictions.

Sec. 124.09. The director of administrative services shall:

(A) Subject to approval, disapproval, or modification by the state personnel board of review, prescribe, amend, and enforce administrative rules for the purpose of carrying out the functions, powers and duties vested in and imposed upon him by ~~[sections 124.01 to 124.64 of the Revised Code]~~ THIS CHAPTER.

(B) Keep records of his proceedings and records of all applications for examinations and all examinations conducted by him. All such records, except recommendations of former employers, shall be open to public inspection under reasonable regulations; provided the governor, or any person designated by him, may, for the purpose of investigation, have free access to all such records, whenever he has reason to believe that ~~[sections 124.01 to 124.64 of the Revised Code]~~ THIS CHAPTER, or the administrative rules of the director prescribed under such sections, are being violated.

(C) Prepare, continue, and keep in the office of the department, a complete roster of all persons in the classified service. This roster shall be open to public inspection at all reasonable hours. It shall show in reference to each of such persons, his name, address, the date of his appointment to or employment in such service, his salary or compensation, the title of the place or office which he holds, the nature of the duties thereof, and, in case of his removal or resignation, the date of the termination of such service.

(D) Make investigations concerning all matters touching the

enforcement and effect of [~~sections 124.01 to 124.64 of the Revised Code~~] THIS CHAPTER, and the administrative rules of the director prescribed under such sections. In the course of such investigations, the director or his deputy may administer oaths and affirmations, and take testimony relative to any matter which the director has authority to investigate.

(E) Have the power to subpoena and require the attendance and testimony of witnesses and the production of books, papers, public records, and other documentary evidence pertinent to the investigations, inquiries, or hearings on any matter which he has authority to investigate, inquire into or hear, and to examine them in relation to any matter which he has authority to investigate, inquire into, or hear. Fees shall be allowed to witnesses, and on their certificate, duly audited, shall be paid by the treasurer of state, or in the case of municipal OR CIVIL SERVICE TOWNSHIP civil service commissions by the county treasurer, for attendance and traveling, as is provided in sections 2335.06 of the Revised Code for witnesses in courts of record. All officers in the civil service of the state or any of the political subdivisions thereof and their deputies, clerks, and employees shall attend and testify when summoned to do so by the director or the state personnel board of review. Dispositions of witnesses may be taken by the director or the board, or any member thereof, in the manner prescribed by law for like depositions in civil actions in the courts of common pleas. In case any person, in disobedience to any subpoena issued by the director or the board, or any member thereof, or the chief examiner, fails or refuses to attend and testify to any matter regarding which he may be lawfully interrogated, or produce any documentary evidence pertinent to any investigation, inquiry, or hearing, the court of common pleas of any county, or any judge thereof, where such disobedience, failure, or refusal occurs, upon application of the director or the board, or any member thereof, or a municipal OR CIVIL SERVICE TOWNSHIP civil service commission, or any commissioner thereof, or their chief examiner, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such courts or a refusal to testify therein.

(F) Make a report to the governor, on or before the first day of January of each year, showing his own actions, the rules and all exceptions thereto in force, and any recommendations for the more effectual accomplishment of the purposes of [~~sections 124.01 to 124.64 of the Revised Code~~] THIS CHAPTER. He shall also furnish any special reports to the governor whenever the same are requested by him. Such reports shall be printed for public distribution under the same regulations as are the reports of other state officers, boards, or commissions.

Sec. 124.11. The civil service of the state and the several counties, cities, CIVIL SERVICE TOWNSHIPS, city health districts, general health districts, and city school districts thereof

shall be divided into the unclassified service and the classified service.

(A) 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 [sections 124.01 to 124.64 of the Revised Code] THIS CHAPTER.

(1) All officers elected by popular vote or persons appointed to fill vacancies in such offices;

(2) All election officers and the employees and clerks of persons appointed by boards of elections;

(3) The members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the governor or by and with his consent; and the members of all boards and commissions and all heads of departments appointed by the mayor or, if there is no mayor such other similar chief appointing authority of any city or city school district; [such sections 124.01 to 124.64 of the Revised Code do] THIS CHAPTER DOES not exempt the chiefs of police departments and chiefs of fire departments of cities OR CIVIL SERVICE TOWNSHIPS from the competitive classified service;

(4) The members of county or district licensing boards or commissions and boards of revision, and deputy county auditors;

(5) All officers and employees elected or appointed by either or both branches of the general assembly, and such employees of the city legislative authority as are engaged in legislative duties;

(6) All commissioned and noncommissioned officers and enlisted men in the military service of the state including military appointees in the office of the adjutant general;

(7) 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; and the library staff of any library in the state supported wholly or in part at public expense;

(8) Three secretaries, assistants, or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants, or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards, or commissions, except civil service commissions, authorized to appoint such secretary, assistant, or clerk and stenographer;

(9) 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 relation to such principals and those persons employed by and directly responsible to elected county officials and holding a fiduciary or administrative relationship to such

elected county officials, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided, that this subdivision shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in this subdivision applies to any position in a county department of welfare created pursuant to sections 329.01 to 329.10 of the Revised Code.

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, and such officers and employees of courts of record as the commission finds it impracticable to determine their fitness by competitive examination;

(11) Assistants to the attorney general, special counsel appointed or employed by the attorney general, assistants to county prosecuting attorneys, and assistants to city solicitors;

(12) Such teachers and employees in the agricultural experiment stations; such student employees in normal schools, colleges, and universities of the state; and such unskilled labor positions as the director of administrative services or any municipal civil service commission may find it impracticable to include in the competitive classified service; provided such exemptions shall be by order of the commission or the director, duly entered on the record of the commission or the director with the reasons for each such exemption;

(13) Such noncitizens of the United States employed by the state, its counties or cities, as physicians or nurses who are duly licensed to practice their respective professions under the laws of Ohio, or medical assistants, in mental, tuberculosis, or chronic disease hospitals, or institutions;

(14) Employees of the governor's office.

(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service, AND UPON THE CREATION BY THE BOARD OF TRUSTEES OF A CIVIL SERVICE TOWNSHIP CIVIL SERVICE COMMISSION ALL PERSONS IN THE EMPLOY OF CIVIL SERVICE TOWNSHIP POLICE OR FIRE DEPARTMENTS HAVING TEN OR MORE FULL-TIME PAID EMPLOYEES to be designated as the competitive class and the unskilled labor class.

(1) The competitive class shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts thereof, AND UPON THE CREATION BY THE BOARD OF TRUSTEES OF A CIVIL SERVICE TOWNSHIP OF A TOWNSHIP CIVIL SERVICE COMMISSION ALL POSITIONS IN CIVIL SERVICE TOWNSHIP POLICE OR FIRE DEPARTMENTS HAVING TEN OR MORE FULL-TIME PAID EMPLOYEES, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment

shall be given in, all positions in the competitive class that are not filled by the promotion, reinstatement, transfer, or reduction, as provided in [~~sections 124.01 to 124.64 of the Revised Code~~] THIS CHAPTER, and the rules of the director of administrative services, by appointment from those certified to the appointing officer in accordance with [~~such sections~~] THIS CHAPTER.

(2) The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be filled by appointment from lists of applicants registered by the director. The director or the commission shall in his rules require an applicant for registration in the labor class to furnish such evidence or take such tests as the director deems proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity, and experience in the work or employment for which he applies. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought, and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the director shall certify from the highest on the list, double the number to be employed, from which the appointing officer shall appoint the number actually needed for the particular work. In the event of more than one applicant receiving the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

Sec. ~~143.27.~~ 124.34. The tenure of every officer or employee in the classified service of the state and the counties, CIVIL SERVICE TOWNSHIPS, cities, city health districts, general health districts, and city school districts thereof, holding a position under [~~sections 143.01 to 143.48~~] THIS CHAPTER of the Revised Code, shall be during good behavior and efficient service and no such officer or employee shall be reduced in pay or position, suspended, or removed, except for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of such sections or the rules of the director of ~~state personnel~~ ADMINISTRATIVE SERVICES or the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office. A finding by the appropriate ethics commission, based upon a preponderance of the evidence, that the facts alleged in a complaint under section 102.06 of the Revised Code constitute a violation of Chapter 102. of the Revised Code may constitute grounds for dismissal. Failure to file a statement or falsely filing a statement required by section 102.02 of the Revised Code may also constitute grounds for dismissal.

In any case of reduction, suspension of more than five working days, or removal, the appointing authority shall furnish such employee with a copy of the order of reduction, suspension, or

removal, which order shall state the reasons therefor. Such order shall be filed with the director of state personnel ADMINISTRATIVE SERVICES and state personnel board of review, or the commission, as may be appropriate.

Within ten days following the filing of such order, the employee may file an appeal, in writing, with the state personnel board of review or the commission. In the event such an appeal is filed, the board or commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the board or commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority.

In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the state personnel board of review or the commission to the court of common pleas of the county in which the employee resides in accordance with the procedure provided by section 119.12 of the Revised Code.

In the case of the suspension for any period of time, or demotion, or removal of a chief of police or a chief of a fire department or any member of the police or fire department of a city OR CIVIL SERVICE TOWNSHIP, the appointing authority shall furnish such chief or member of a department with a copy of the order of suspension, demotion, or removal, which order shall state the reasons therefor. Such order shall be filed with the municipal OR CIVIL SERVICE TOWNSHIP civil service commission. Within ten days following the filing of such order such chief or member of a department may file an appeal, in writing, with the municipal OR CIVIL SERVICE TOWNSHIP civil service commission. In the event such an appeal is filed, the commission shall forthwith notify the appointing authority and shall hear, or appoint a trial board to hear, such appeal within thirty days from and after its filing with the commission, and it may affirm, disaffirm, or modify the judgment of the appointing authority. An appeal on questions of law and fact may be had from the decision of the municipal OR CIVIL SERVICE TOWNSHIP civil service commission to the court of common pleas in the county in which such city OR CIVIL SERVICE TOWNSHIP is situated. Such appeal shall be taken within thirty days from the finding of the commission.

Sec. 143.29. 124.38. Each employee, whose salary or wage is paid in whole or in part by the state, each employee in the various offices of the county [service and], municipal, AND CIVIL SERVICE TOWNSHIP service, and each employee of any board of education for whom sick leave is not provided by section 3319.141 of the Revised Code, shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay. Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to personal illness, pregnancy, injury, exposure to contagious disease

which could be communicated to other employees, and to illness, injury, or death in the employee's immediate family. Unused sick leave shall be cumulative without limit. When sick leave is used, it shall be deducted from the employee's credit on the basis of one hour for every one hour of absence from previously scheduled work. The previously accumulated sick leave of an employee who has been separated from the public service, shall be placed to his credit upon his re-employment in the public service, provided that such re-employment takes place within ten years of the date on which the employee was last terminated from public service. An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers. The appointing authority of each employing unit shall require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action including dismissal. This section shall be uniformly administered as to employees in each agency of the state government by the director of ~~[state personnel]~~ ADMINISTRATIVE SERVICES. No sick leave may be granted to a state employee upon or after his retirement or termination of employment.

This section does not interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employees for unused sick leave.

Sec. 124.40. (A) The mayor or other chief appointing authority of each city in the state shall appoint three persons, one for a term of two years, one for four years, and one for six years, who shall constitute the municipal civil service commission of such city and of the city school district and city health district in which such city is located. Each alternate year thereafter the mayor or other chief appointing authority shall appoint one person, as successor of the member whose term expires, to serve six years. A vacancy shall be filled by the mayor or other chief appointing authority of a city for the unexpired term. At the time of any appointment, not more than two commissioners shall be adherents of the same political party. Such municipal civil service commission shall prescribe, amend, and enforce rules not inconsistent with ~~[sections 124.01 to 124.64 of the Revised Code,]~~ THIS CHAPTER for the classification of positions in the civil service of such city and city school district, and all the positions in the city health district; for examinations and resignations therefor; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements therein; and for standardizing positions and maintaining efficiency therein. ~~[Said]~~ THE municipal civil service commission shall exercise all other powers and perform all

other duties with respect to the civil service of such city, city school district, and city health district, as prescribed [by said sections] IN THIS CHAPTER and conferred upon the director of administrative services and the state personnel board of review with respect to the civil service of the state; and all authority granted to the director and the board with respect to the service under their jurisdiction shall, except as otherwise provided by [sections 124.01 to 124.64 of the Revised Code] THIS CHAPTER, be held to grant the same authority to the municipal civil service commission with respect to the service under its jurisdiction. The procedure applicable to reductions, suspensions, and removals, as provided for in section 124.34 of the Revised Code, shall govern the civil service of cities. The expense and salaries of a municipal civil service commission shall be determined by the legislative authority of [such] THE city and a sufficient sum of money shall be appropriated each year to carry out [sections 124.01 to 124.64 of the Revised Code;] THIS CHAPTER in [such] THE city.

All persons who are employed by a city school district, city health district, or city health department when a municipal civil service commission having jurisdiction over them is appointed, or when they become subject to civil service by extension of civil service to include new classifications of employees, shall continue to hold their positions until removed in accordance with the civil service laws.

If the appointing authority of any such city fails to appoint a civil service commission or commissioner, as provided by law, within sixty days after he has the power to so appoint, or after a vacancy exists, the state personnel board of review shall make the appointment, and such appointee shall hold office until the expiration of the term of the appointing authority of such city. If any such municipal civil service commission fails to prepare and submit such rules and regulations in pursuance of [sections 124.01 to 124.64 of the Revised Code] THIS CHAPTER, the board shall forthwith make such rules. [Sections 124.01 to 124.64] THIS CHAPTER of the Revised Code, shall in all other respects, except as provided in this section, be in full force in such cities.

Each municipal civil service commission shall make reports from time to time, as the board requires, of the manner in which the law and the rules and regulations thereunder have been and are being administered, and the results of their administration in such city, city school district, and city health district. A copy of the annual report of each such municipal civil service commission shall be filed in the office of the board as a public record.

Whenever the board has reason to believe that a municipal civil service commission is violating or is failing to perform the duties imposed upon it by law, or that any member of such municipal civil service commission is willfully or through culpable negligence violating the law or failing to perform his duties as a member of [such] THE commission, it shall institute an investigation, and if, in the judgment of the board, it finds any such

violation or failure to perform the duties imposed by law, it shall make a report of such violation in writing to the chief executive authority of such city, which report shall be a public record.

Upon the receipt of [such] THE report from the board, charging a municipal civil service commissioner with violating or failing to perform the duties imposed by law, or willfully or through culpable negligence violating the law by failure to perform his duties as a member of [such] THE municipal civil service commission, along with the evidence on which [such] THE report is based, the chief executive officer of [such] THE city shall forthwith remove [such] THE municipal civil service commissioner. In all cases of removal of a municipal civil service commissioner by the chief executive authority of any such city an appeal may be had to the court of common pleas, in the county in which [such] THE city is situated, to determine the sufficiency of the cause of removal. [Such] THE appeal shall be taken within ten days from the decision of the chief executive authority of [such] THE city. Should the court disaffirm the judgment of the chief executive authority, [such] THE commissioner shall be reinstated to his former position in the municipal civil service commission. The chief executive authority of such city may at any time remove any municipal civil service commissioner for inefficiency, neglect of duty, or malfeasance in office, having first given to [such] THE commissioner a copy of the charges against him and an opportunity to be publicly heard in person or by counsel in his own defense.

The mayor has the exclusive right to suspend the chief of the police department or the chief of the fire department for incompetence, gross neglect of duty, gross immorality, habitual drunkenness, failure to obey orders given him by the proper authority, or for any other reasonable and just cause. If either the chief of police or the chief of the fire department is so suspended, the mayor forthwith shall certify such fact, together with the cause of [such] THE suspension, to the municipal civil service commission, which within five days from the date of receipt of [such] THE notice shall proceed to hear such charges and render judgment thereon, which judgment may affirm, disaffirm, or modify the judgment of the appointing officer, and an appeal may be had from the decision of the commission to the court of common pleas as provided in section 124.34 of the Revised Code to determine the sufficiency of the cause of removal.

(B) THE BOARD OF TRUSTEES OF A TOWNSHIP WITH A POPULATION OF TEN THOUSAND OR MORE PERSONS RESIDING WITHIN THE TOWNSHIP AND OUTSIDE ANY MUNICIPAL CORPORATION AND WHICH HAS A POLICE OR FIRE DEPARTMENT OF TEN OR MORE FULL-TIME PAID EMPLOYEES MAY APPOINT THREE PERSONS WHO SHALL CONSTITUTE THE TOWNSHIP CIVIL SERVICE COMMISSION. OF THE INITIAL APPOINTMENTS MADE TO THE COMMISSION, ONE SHALL BE FOR A TERM ENDING TWO YEARS AFTER THE DATE OF INITIAL APPOINTMENT, ONE SHALL

BE FOR A TERM ENDING FOUR YEARS AFTER THAT DATE, AND ONE SHALL BE FOR A TERM ENDING SIX YEARS AFTER THAT DATE. THEREAFTER, TERMS OF OFFICE SHALL BE FOR SIX YEARS, EACH TERM ENDING ON THE SAME DAY OF THE SAME MONTH AS DID THE TERM WHICH IT SUCCEEDS. EACH MEMBER SHALL HOLD OFFICE FROM THE DATE OF HIS APPOINTMENT UNTIL THE END OF THE TERM FOR WHICH HE WAS APPOINTED. ANY MEMBER APPOINTED TO FILL A VACANCY OCCURRING PRIOR TO THE EXPIRATION OF THE TERM FOR WHICH HIS PREDECESSOR WAS APPOINTED SHALL HOLD OFFICE FOR THE REMAINDER OF SUCH TERM. ANY MEMBER SHALL CONTINUE IN OFFICE SUBSEQUENT TO THE EXPIRATION DATE OF HIS TERM UNTIL HIS SUCCESSOR TAKES OFFICE, OR UNTIL A PERIOD OF SIXTY DAYS HAS ELAPSED, WHICHEVER OCCURS FIRST. AT THE TIME OF ANY APPOINTMENT, NOT MORE THAN TWO COMMISSIONERS SHALL BE ADHERENTS OF THE SAME POLITICAL PARTY.

THE BOARD OF TOWNSHIP TRUSTEES SHALL DETERMINE THE COMPENSATION AND EXPENSES TO BE PAID TO THE MEMBERS OF THE TOWNSHIP CIVIL SERVICE COMMISSION. THE POWERS AND DUTIES CONFERRED ON MUNICIPAL CIVIL SERVICE COMMISSIONS AND THE SUPERVISORY AUTHORITY OF THE STATE PERSONNEL BOARD OF REVIEW UNDER DIVISION (A) OF THIS SECTION SHALL BE APPLICABLE TO THE CIVIL SERVICE COMMISSION OF A CIVIL SERVICE TOWNSHIP. THE BOARD OF TOWNSHIP TRUSTEES HAS THE EXCLUSIVE RIGHT TO SUSPEND THE CHIEF OF THE POLICE OR FIRE DEPARTMENT OF THE TOWNSHIP IN THE SAME MANNER AS PROVIDED IN DIVISION (A) OF THIS SECTION FOR MUNICIPAL CHIEFS.

THE JURISDICTION OF THE CIVIL SERVICE TOWNSHIP CIVIL SERVICE COMMISSION IS LIMITED TO EMPLOYEES OF THE TOWNSHIP FIRE OR POLICE DEPARTMENT IF THE DEPARTMENT HAS TEN OR MORE FULL-TIME PAID EMPLOYEES AND DOES NOT EXTEND TO ANY OTHER TOWNSHIP EMPLOYEES.

Sec. 124.41. No person shall be eligible to receive an original appointment to a police department, as a policeman or policewoman, subject to the civil service laws of this state, unless he has reached the age of twenty-one and has, not more than one hundred twenty days prior to the date of such appointment, passed a physical examination, given by a licensed physician, showing that he or she meets the physical requirements necessary to perform the duties of a policeman or policewoman as established by the civil service commission having jurisdiction over the appointment. The appointing authority shall, prior to making any such appointment, file with the police and firemen's disability and pension fund a copy of the report or findings of said licensed physician. The professional fee

for such physical examination shall be paid by the civil service commission. No person shall be eligible to receive an original appointment on and after his thirty-first birthday.

Notwithstanding this section, a municipal council may enact an ordinance providing that a person between the age of twenty-one and thirty-six, inclusive, may receive an original appointment to [a] THE police department, OR THE BOARD OF TRUSTEES OF A CIVIL SERVICE TOWNSHIP MAY DO SO BY RESOLUTION. Nothing in this section shall prevent a municipal corporation OR A CIVIL SERVICE TOWNSHIP from establishing a police cadet program and employing persons as police cadets at age eighteen for the purposes of training persons to become policemen and policewomen. THE BOARD OF TRUSTEES OF A CIVIL SERVICE TOWNSHIP MAY ESTABLISH BY RESOLUTION SUCH A CADET PROGRAM. A person participating in a municipal OR TOWNSHIP police cadet program shall not be permitted to carry or use any firearm in the performance of his duties, except that he may be taught the proper use of firearms as part of his training.

Sec. 124.42. No person shall be eligible to receive an original appointment as fireman in a fire department, subject to the civil service laws of this state, unless he has reached the age of twenty-one and has, not more than one hundred twenty days prior to receiving such appointment, passed a physical examination, given by a licensed physician, showing that he meets the physical requirements necessary to perform the duties of a fireman as established by the civil service commission having jurisdiction over the appointment. The appointing authority shall, prior to making any such appointment, file with the police and fireman's disability and pension fund a copy of the report or findings of said licensed physician. The professional fee for such physical examination shall be paid by the civil service commission. No person shall be eligible to receive an original appointment on and after his thirty-first birthday.

Notwithstanding this section, a municipal council may enact an ordinance providing that a person between the age of twenty-one and thirty-six, inclusive, may receive an original appointment to [a] THE fire department, OR THE BOARD OF TRUSTEES OF A CIVIL SERVICE TOWNSHIP MAY DO SO BY RESOLUTION. Nothing in this section shall prevent a municipal corporation OR CIVIL SERVICE TOWNSHIP from establishing a fire cadet program and employing persons as fire cadets at age eighteen for the purpose of training persons to become fire fighters. THE BOARD OF TRUSTEES OF A CIVIL SERVICE TOWNSHIP MAY ESTABLISH BY RESOLUTION SUCH A CADET PROGRAM. A person participating in a municipal OR TOWNSHIP fire cadet program shall not be permitted to carry or use any firearm in the performance of his duties.

Sec. 124.43. Separate examinations shall be given and separate eligibility lists maintained by municipal AND CIVIL SER-

VICE TOWNSHIP civil service commissions for original appointments to and promotions in fire and police departments in cities AND CIVIL SERVICE TOWNSHIPS. No person may be transferred from one list to the other. Appointments and promotions in [said] THE departments shall be only from the separate eligible lists maintained for each of [said] THE departments. Transfers of personnel from one department to the other are hereby prohibited.

Sec. 124.44. No positions above the rank of patrolman in the police department shall be filled by original appointment. Vacancies in positions above the rank of patrolman in a police department shall be filled by promotion from among persons holding positions in a rank lower than the position to be filled. No position above the rank of patrolman in a police department shall be filled by any person unless he has first passed a competitive promotional examination. Promotion shall be by successive ranks so far as practicable, and no person in a police department shall be promoted to a position in a higher rank who has not served at least twelve months in the next lower rank. No competitive promotional examination shall be held unless there are at least two persons eligible to compete. Whenever a municipal OR CIVIL SERVICE TOWNSHIP civil service commission determines that there are less than two persons holding positions in the rank next lower than the position to be filled, who are eligible and willing to compete, such commission shall allow the persons holding positions in the then next lower rank who are eligible, to compete with the persons holding positions in the rank lower than the position to be filled. For the purpose of this section, an increase in the salary or other compensation of anyone holding a position in a police department, beyond that fixed for the rank in which such position is classified, shall be deemed a promotion. Whenever a vacancy occurs in a position above the rank of patrolman in a police department, and there is no eligible list for such rank, the municipal OR CIVIL SERVICE TOWNSHIP civil service commission shall, within sixty days of such vacancy, hold a competitive promotional examination. After such examination has been held and an eligible list established, the commission shall forthwith certify to the appointing officer the name of the person receiving the highest rating. Upon such certification, the appointing officer shall appoint the person so certified within thirty days from the date of such certification. If there is a list, the commission shall, where there is a vacancy, immediately certify the name of the person having the highest rating, and the appointing authority shall appoint such person within thirty days from the date of such certification.

Sec. 124.45. Vacancies in positions above the rank of regular fireman in a fire department shall be filled by competitive promotional examinations, and promotions shall be by successive ranks as provided in this section and sections 124.46 to 124.49 of the Revised Code. Positions in which such vacancies occur shall be

called promoted ranks.

When a vacancy occurs in the promoted rank immediately above the rank of regular fireman, no person shall be eligible to take the examination unless he has served twenty-four months in the rank of regular firemen, provided in those cases where there are less than two persons in the rank of regular firemen who have served twenty-four months therein and are willing to take the examination, the twenty-four month service requirement does not apply.

When a vacancy occurs in a promoted rank, other than the promoted rank immediately above the rank of regular fireman, no person shall be eligible to take the examination unless he has served twelve months in the rank from which the promotion is to be made, provided in those cases where there are less than two persons in such next lower rank who have served twelve months therein and are willing to take the examination the twelve months service requirement shall not apply. If the nonapplication of the twelve month service requirement to persons in the next lower rank does not produce two persons eligible and willing to compete, then the same method shall be followed by going to successively lower ranks until two or more persons are eligible and willing to compete in an examination for the vacancy. In the event this process of searching successively lower ranks reaches the rank of regular fireman, the twenty-four month service requirement applies, provided in those cases where such application still fails to produce two persons who are eligible and willing to compete, said twenty-four month service requirement does not apply. In the event two persons are unwilling to compete for such examination, then the one person who is willing to compete shall be appointed to fill the vacancy after passing a qualifying examination.

Promotional examinations for positions within a fire department shall relate to those matters which test the ability of the person examined to discharge the particular duties of the position sought and shall be in writing, provided, in examinations for positions requiring the operation of machines or equipment, practical demonstration tests of the operation of such machines or equipment may be a part of the examination.

Those persons who compete in a promotional examination in accordance with the rules of the civil service commission shall have added to their grade credit for seniority. Credit for seniority shall be given as follows: one point shall be added for each of the first four year of service and six-tenths of a point shall be added for each year for the next ten years of service. In computing the credit for seniority, half of the credit above set out shall be given for a half year of service. Credit for seniority shall be based only on service in the municipal OR CIVIL SERVICE TOWNSHIP fire department and the service provided for in the next succeeding paragraph.

When service in a municipal OR CIVIL SERVICE TOWNSHIP fire department is interrupted by service in the armed forces of the

United States, seniority credit shall be granted in promotional examinations for the time so served. No additional credit for military service shall be allowed in promotional examinations.

Credit for efficiency may be given as an added credit and shall be ten per cent of the member's efficiency rating for the last year and shall be based on the record of efficiency maintained in the fire department in the manner established by the civil service commission, provided the efficiency shall be graded by three ranking officers of the fire department familiar with the work of the member. In those cases where three such officers do not exist the ranking officers or officer familiar with the work of the member shall grade the efficiency.

After a promotional examination has been held and prior to the grading of such examination papers, each participant in said promotional examination shall have a period of five days, exclusive of Saturdays, Sundays, and holidays, to inspect the questions, the rating keys or answers to the examination and to file any protest he may deem advisable. These protests shall be in writing and shall remain anonymous to the commission. All protests with respect to rating keys or answers shall be determined by the commission within a period of not more than five days, exclusive of Saturdays, Sundays, and holidays, and its decision shall be final. If the commission finds an error in the rating key or answer, it shall publish a revised rating key within five days of its finding of such error or errors. The revised rating key or answer shall then be available to participants for a period of five days, exclusive of Saturdays, Sundays, and holidays, subsequent to such determination of error or errors.

After the grading of such examination papers, any participant in the examination who deems his examination papers have been erroneously graded, shall have the right to appeal to the commission, and said appeal or appeals shall be heard by the commission.

The public notice of a holding of a promotional examination for a position or positions in a fire department shall, unless waived by all persons eligible to participate, be published not less than thirty days prior to the examination and shall contain a description of the source material from which the examination questions are prepared. Such source material shall be readily accessible to the examinee. Failure to comply with this requirement shall make void the pursuant examination. This paragraph does not prohibit the use of questions having answers based on experience in the fire service within the fire department in which the promotional examination is being given.

Sec. 124.47. Within any rank, the municipal council OR BOARD OF TRUSTEES OF A CIVIL SERVICE TOWNSHIP may establish such special positions having special duties with preferential pay as the council OR BOARD deems necessary, but the holding of any such special positions shall not establish eligibility

to the next higher rank to the exclusion of other persons in the same rank who do not hold such special positions. No special position established by council OR THE BOARD within a rank in a fire department shall be filled without promotional examination in the same manner as promotions from rank to rank.

Sec. 124.49. All promotional appointments in a fire department may be for a probationary period to be fixed by the rules of the civil service commission and not to exceed six months. No promotion shall be deemed final until the appointee has satisfactorily served his probationary period. At the end of the probationary period the appointing authority shall transmit to the civil service commission a record of the employee's service, and if such service is satisfactory the appointee shall continue in his promoted rank. If at the end of the probationary period the appointee's service is unsatisfactory, he shall be reduced to the rank held at the time he was appointed to the higher rank. In all cases of unsatisfactory probationary periods in the fire department, the appointing authority shall, at the end of the probationary period, furnish the employee with a written notice of unsatisfactory probation and a detailed statement of the basis for such finding. Within ten days thereafter such employee may appeal from the decision or order of the appointing authority to the municipal OR CIVIL SERVICE TOWNSHIP CIVIL SERVICE commission, and the commission shall hear, or appoint a trial board to hear, such employee's appeal within thirty days from its filing with the commission. An appeal to determine the sufficiency of the cause of demotion may be had from the decision of the [municipal] commission to the court of common pleas of the county in which [such] THE municipality OR TOWNSHIP is situated. [Such] THE appeal shall be taken within twenty days from the decision of the commission.

Sec. 124.50. Any person holding an office or position under the classified service in a fire department or a police department who is separated therefrom due to injury or physical disability incurred in the performance of duty shall be reinstated immediately, or one suffering injury or physical disability incurred other than in the performance of duty may be reinstated, upon filing with the chief of the fire department or the chief of the police department, a written application for reinstatement, to the office or position he held at the time of such separation, after passing a physical examination showing that he has recovered from the injury or other physical disability. The physical examination shall be made by a licensed physician designated by the firemen's pension board or the policemen's pension board, within two weeks after application for reinstatement has been made, provided such application for reinstatement is filed within five years from the date of separation from the department, and further provided that such application shall not be filed after the date of service eligibility retirement.

Any person holding an office or position under the classified service in a fire department or a police department, who resigns

therefrom, may be reinstated to the rank of fireman or policeman, upon the filing of a written application for reinstatement with the municipal OR CIVIL SERVICE TOWNSHIP civil service commission [~~of the city in which such fire department or police department is located,~~] and a copy thereof with the chief of the fire department or chief of the police department, and upon passing a physical examination disclosing that [~~said~~] THE person is physically fit to perform the duties of the office of fireman or policeman, [~~said~~] THE application for reinstatement shall be filed within one year from the date of resignation. Any person reinstated pursuant to the authority of this paragraph shall not receive credit for seniority earned prior to resignation and reinstatement, and shall not be entitled to reinstatement to a position above the rank of fireman or patrolman, regardless of the position [~~said~~] THE person may have held at the time of his resignation.

Sec. 124.55. The auditor of state, or any fiscal officer of any county, city, city health district, general health district, or city school district thereof, OR CIVIL SERVICE TOWNSHIP, shall not draw, sign, issue, or authorize the drawing, signing, or issuing of any warrant on the treasurer of state or other disbursing officer of the state, or the treasurer or other disbursing officer of any county, city, or city school district thereof, OR CIVIL SERVICE TOWNSHIP, to pay any salary or compensation to any officer, clerk, employee, or other person in the classified service unless an estimate, payroll, or account for such salary or compensation containing the name of each person to be paid, bears the certificate of the director of administrative services, or in the case of the service of the city OR CIVIL SERVICE TOWNSHIP, the certificate of the [~~municipal~~] civil service commission of [~~such~~] THE city OR CIVIL SERVICE TOWNSHIP, that the persons named in [~~such~~] THE estimate, payroll, or account have been appointed, promoted, reduced, suspended, or laid off, or are being employed in pursuance of [~~sections 124.01 to 124.64 of the Revised Code,~~] THIS CHAPTER and the rules adopted [~~under such sections~~] THEREUNDER.

Where estimates, payrolls, or accounts are prepared by electronic data processing equipment, the director of administrative services or the municipal OR CIVIL SERVICE TOWNSHIP civil service commission may develop methods for controlling input or verifying output of such equipment to assure compliance with [~~sections 124.01 to 124.64 of the Revised Code,~~] THIS CHAPTER and the rules adopted [~~under such sections~~] THEREUNDER. Any estimates, payrolls, or accounts prepared by these methods shall be subject to special audit at any time.

Any sum paid contrary to this section may be recovered from any officer making such payment in contravention of law and of the rules made in pursuance of law, or from any officer signing, countersigning, or authorizing the signing or countersigning of any warrant for the payment of the same, or from the sureties on his official bond, in an action in the courts of the state, main-

tained by a citizen resident therein. All moneys recovered in any action brought under this section must, when collected, be paid into the state treasury or the treasury of the appropriate civil division of the state, except that the plaintiff in any action shall be entitled to recover his own taxable costs of such action.

Sec. 124.56. When the state personnel board of review or a municipal OR CIVIL SERVICE TOWNSHIP civil service commission has reason to believe that any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension, or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of [~~sections 124.01 to 124.64~~] THIS CHAPTER of the Revised Code, the board or commission shall make an investigation, and if it finds that [~~such~~] A violation of [~~sections 124.01 to 124.64 of the Revised Code~~] THIS CHAPTER, or the intent and spirit of [~~such sections~~] THIS CHAPTER has occurred, it shall make a report to the governor, or in the case of a municipal OR TOWNSHIP office or employee, the commission shall make a report to the mayor or other chief appointing authority, OR IN THE CASE OF A CIVIL SERVICE TOWNSHIP, THE COMMISSION SHALL MAKE A REPORT TO THE BOARD OF TOWNSHIP TRUSTEES, who may remove forthwith such guilty officer, board, commission, head of department, or person [~~; an opportunity first having been given to such~~]. THE officer or employee [~~; of being~~] SHALL FIRST BE GIVEN AN OPPORTUNITY TO BE publicly heard in person or by counsel in his own defense [~~; and such~~]. THE action of removal by the governor, mayor, or other chief appointing authority is final except as otherwise provided in [~~sections 124.01 to 124.64~~] THIS CHAPTER of the Revised Code.

Sec. 124.57. No officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, AND CIVIL SERVICE TOWNSHIPS, shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting any such assessment, contribution, or payment from any officer or employee in the classified service of the state and the several counties, cities, or city school districts thereof, OR CIVIL SERVICE TOWNSHIPS; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts thereof, AND CIVIL SERVICE TOWNSHIPS, be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinions.

Sec. 124.60. No officer or employee of the state or the several counties, cities, and city school districts thereof, OR CIVIL SER-

VICE TOWNSHIPS, shall appoint, promote, reduce, suspend, lay off, discharge, or in any manner change the official rank or compensation of any officer or employee in the classified service, or promise or threaten to do so, for giving, withholding or neglecting to make any contribution of money or other valuable thing for any party or political purpose, or for refusal or neglect to render any party or political service.

Sec. 124.62. After a rule has been duly established and published by the director of administrative services or by any municipal OR CIVIL SERVICE TOWNSHIP civil service commission according to [~~sections 124.01 to 124.61 of the Revised Code~~] THIS CHAPTER, no person shall make an appointment to office or select a person for employment contrary to such rule, or willfully refuse or neglect to comply with or to conform to [~~such~~] THE sections OF THIS CHAPTER, or willfully violate any of [~~such~~] THE sections. If any person who is convicted of violating this section holds any public office or place of public employment, such office or position shall by virtue of such conviction be rendered vacant.

Sec. 505.38. (A) In each township or fire district which has a fire department, the head of such department shall be a fire chief, appointed by the board of township trustees. The board shall provide for the employment of such fire fighters as it deems best, and shall fix their compensation, provided, no person shall, after July 1, 1970, be appointed as a permanent full-time paid member of the fire department of any township, unless such person has received a certificate issued by the state board of education under section 3303.07 of the Revised Code evidencing his satisfactory completion of a fire fighter training program. Such appointees shall continue in office until removed therefrom as provided by sections 733.35 to 733.39 [~~; inclusive;~~] of the Revised Code. To initiate removal proceedings, and for such purpose, the board shall designate the fire chief or a private citizen to investigate the conduct and prepare the necessary charges in conformity with sections 733.35 to 733.39 [~~; inclusive;~~] of the Revised Code.

In each township not having a fire department, the board of trustees shall appoint a fire prevention officer who shall exercise all of the duties of a fire chief except those involving the maintenance and operation of fire apparatus.

The board of trustees may fix such compensation as it deems best. Such appointee shall continue in office until removed therefrom as provided by such sections. The provisions of section 505.45 of the Revised Code shall extend to such officer.

In case of the removal of a fire chief or any member of the fire department of a township or district, an appeal may be had from the decision of the board to the court of common pleas of the county in which such township or district fire department is situated, to determine the sufficiency of the cause of removal. Such appeal from the findings of the board shall be taken within ten days.

No person shall receive an appointment under this section after January 1, 1970, unless he has, not more than sixty days prior to receiving such appointment, passed a physical examination, given by a licensed physician, showing that he meets the physical requirements necessary to perform the duties of the position to which he is appointed as established by the board of township trustees having jurisdiction over the appointment. The appointing authority shall, prior to making any such appointment, file with the police and firemen's disability and pension fund a copy of the report or findings of said licensed physician. The professional fee for such physical examination shall be paid for by the board of township trustees.

(B) DIVISION (A) OF THIS SECTION SHALL NOT APPLY TO ANY TOWNSHIP HAVING A POPULATION OF TEN THOUSAND OR MORE PERSONS RESIDING WITHIN THE TOWNSHIP AND OUTSIDE OF ANY MUNICIPAL CORPORATION, WHICH HAS ITS OWN FIRE DEPARTMENT EMPLOYING TEN OR MORE FULL-TIME PAID EMPLOYEES, AND WHICH HAS A CIVIL SERVICE COMMISSION ESTABLISHED UNDER DIVISION (B) OF SECTION 124.40 OF THE REVISED CODE. SUCH TOWNSHIP SHALL COMPLY WITH THE PROCEDURES FOR THE EMPLOYMENT, PROMOTION, AND DISCHARGE OF FIRE FIGHTERS PROVIDED BY CHAPTER 124. OF THE REVISED CODE. THE BOARD OF TOWNSHIP TRUSTEES SHALL DETERMINE THE NUMBER OF PERSONNEL REQUIRED AND ESTABLISH SALARY SCHEDULES AND CONDITIONS OF EMPLOYMENT NOT IN CONFLICT WITH CHAPTER 124. OF THE REVISED CODE. NO PERSON SHALL RECEIVE AN ORIGINAL APPOINTMENT AS A PERMANENT FULL-TIME PAID MEMBER OF THE FIRE DEPARTMENT OF SUCH A TOWNSHIP AFTER THE EFFECTIVE DATE OF THIS SECTION UNLESS HE HAS RECEIVED A CERTIFICATE ISSUED BY THE STATE BOARD OF EDUCATION UNDER SECTION 3303.07 OF THE REVISED CODE EVIDENCING HIS SATISFACTORY COMPLETION OF A FIRE FIGHTER TRAINING PROGRAM. PERSONS EMPLOYED AS FIRE FIGHTERS IN SUCH TOWNSHIP ON THE EFFECTIVE DATE OF THIS SECTION SHALL NOT BE REQUIRED TO PASS A COMPETITIVE EXAMINATION OR A FIRE FIGHTER TRAINING PROGRAM IN ORDER TO RETAIN THEIR EMPLOYMENT, BUT SUCH PERSONS SHALL BE ELIGIBLE FOR PROMOTION ONLY BY COMPLIANCE WITH THE PROVISIONS OF CHAPTER 124. OF THE REVISED CODE.

Sec. 505.49. (A) The township trustees by a two-thirds vote of the board may adopt rules and regulations necessary for the operation of the township police district, including a determination of the qualifications of the chief of police, patrolmen, and others to serve as members of the district police force.

The township trustees by a two-thirds vote of the board shall

appoint a chief of police for the district, determine the number of patrolmen and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the township police district. The chief of police of the district shall serve at the pleasure of the township trustees and shall appoint patrolmen and such other personnel as the district may require, subject to the rules, regulations, and limits as to qualification, salary ranges, and numbers of personnel established by the township board of trustees. The township trustees may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to section 509.01 of the Revised Code, or designate the chief of police or any patrolman appointed by him as a constable, as provided for in section 509.01 of the Revised Code, for the township police district.

A patrolman, other police district employee, or police constable, who has been awarded a certificate attesting to satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 [; inclusive,] of the Revised Code. Any other patrolman, police district employee, or police constable shall serve at the pleasure of the township trustees. In case of removal or suspension of any appointee an appeal may be had from the decision of the board to the court of common pleas of the county in which the district is situated, to determine the sufficiency of the cause of removal or suspension. Such appeal shall be taken within ten days of written notice to the appointee of the decision of the board.

(B) DIVISION (A) OF THIS SECTION DOES NOT APPLY TO ANY TOWNSHIP HAVING A POPULATION OF TEN THOUSAND OR MORE PERSONS RESIDING WITHIN THE TOWNSHIP AND OUTSIDE OF ANY MUNICIPAL CORPORATION, WHICH HAS ITS OWN POLICE DEPARTMENT EMPLOYING TEN OR MORE FULL-TIME PAID EMPLOYEES, AND WHICH HAS A CIVIL SERVICE COMMISSION ESTABLISHED UNDER DIVISION (B) OF SECTION 124.40 OF THE REVISED CODE. SUCH TOWNSHIP SHALL COMPLY WITH THE PROCEDURES FOR THE EMPLOYMENT, PROMOTION, AND DISCHARGE OF POLICE PERSONNEL PROVIDED BY CHAPTER 124. OF THE REVISED CODE. THE BOARD OF TOWNSHIP TRUSTEES SHALL DETERMINE THE NUMBER OF PERSONNEL REQUIRED AND ESTABLISH SALARY SCHEDULES AND CONDITIONS OF EMPLOYMENT NOT IN CONFLICT WITH CHAPTER 124. OF THE REVISED CODE. PERSONS EMPLOYED AS POLICE PERSONNEL IN SUCH TOWNSHIP ON THE EFFECTIVE DATE OF THIS SECTION SHALL NOT BE REQUIRED TO PASS A COMPETITIVE EXAMINATION OR A POLICE TRAINING PROGRAM IN ORDER TO RETAIN THEIR EMPLOYMENT, BUT SUCH PERSONS SHALL BE ELIGIBLE FOR

PROMOTION ONLY BY COMPLIANCE WITH THE PROVISIONS OF CHAPTER 124. OF THE REVISED CODE. THIS DIVISION DOES NOT APPLY TO CONSTABLES APPOINTED PURSUANT TO SECTION 509.01 OF THE REVISED CODE.

Sec. 505.491. When the board of trustees of a township has reason to believe that any chief of police, patrolman, or other township police district employee appointed under DIVISION (A) OF section 505.49 of the Revised Code, or any police constable appointed under section 509.01 of the Revised Code, has been guilty, in the performance of his official duty, of bribery, misfeasance, malfeasance, nonfeasance, misconduct in office, neglect of duty, gross immorality, habitual drunkenness, incompetence, or failure to obey orders given him by the proper authority, the board shall immediately file written charges against such person, setting forth in detail a statement of such alleged guilt and, at the same time, or as soon thereafter as possible, serve a true copy of such charges upon the person against whom they are made. Such service may be made on the person or by leaving a copy of the charges at the office or residence of such person. Return thereof shall be made to the board, as is provided for the return of the service of summons in a civil action.

SECTION 2. That existing sections 124.01, 124.03, 124.06, 124.09, 124.11, 143.27, 143.29, 124.40, 124.41, 124.42, 124.43, 124.44, 124.45, 124.47, 124.49, 124.50, 124.55, 124.56, 125.57, 124.60, 124.62, 505.38, 505.49, and 505.491 of the Revised Code are hereby repealed.

A. D. Lencione

Speaker _____ of the House of Representatives.

Miss Brown

President _____ of the Senate.

Passed March 28, 1974

Approved May 9, 1974

John Gilligan

Governor.

(Amended House Bill No. 671)

AN ACT

To amend sections 124.11, 505.38, and 505.49 of the Revised Code to permit the board of township trustees in a civil service township to appoint the fire and police chief to serve at the pleasure of the board, and to entitle police and fire chiefs so appointed who are subsequently removed from that position to return, upon removal, to their previous positions in the classified service.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 124.11, 505.38, and 505.49 of the Revised Code be amended to read as follows:

Sec. 124.11. The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

(A) 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.

(1) All officers elected by popular vote or persons appointed to fill vacancies in such offices;

(2) All election officers and the employees and clerks of persons appointed by boards of elections;

(3) The members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the governor or by and with his consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or, if there is no mayor such other similar chief appointing authority of any city or city school district; this chapter does not exempt the chiefs of police departments and chiefs of

fire departments of cities or civil service townships from the competitive classified service;

(4) The members of county or district licensing boards or commissions and boards of revision, and deputy county auditors;

(5) All officers and employees elected or appointed by either or both branches of the general assembly, and such employees of the city legislative authority as are engaged in legislative duties;

(6) All commissioned and noncommissioned officers and enlisted men in the military service of the state including military appointees in the office of the adjutant general;

(7) 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; and the library staff of any library in the state supported wholly or in part at public expense;

(8) Three secretaries, assistants, or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants, or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards, or commissions, except civil service commissions, authorized to appoint such secretary, assistant, or clerk and stenographer;

(9) 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 relation to such principals and those persons employed by and directly responsible to elected county officials and holding a fiduciary or administrative relationship to such elected county officials, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided, that this subdivision shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in this subdivision applies to any position in a county department of welfare created pursuant to sections 329.01 to 329.10 of the Revised Code.

(10) Bailiffs, constables, official stenographers, and commissioners of courts of record, and such officers and employees of courts of record as the commission finds it impracticable to determine their fitness by competitive examination;

(11) Assistants to the attorney general, special counsel appointed or employed by the attorney general, assistants to county prosecuting attorneys, and assistants to city solicitors;

(12) Such teachers and employees in the agricultural experiment stations; such student employees in normal schools, colleges, and universities of the state; and such unskilled labor positions as the director of administrative services or any municipal civil service commission may find it impracticable to include in the

competitive classified service; provided such exemptions shall be by order of the commission or the director, duly entered on the record of the commission or the director with the reasons for each such exemption;

(13) Any physician or dentist who is a full-time employee of the department of mental health and mental retardation or of an institution under its jurisdiction; and physicians who are in residency programs at the institutions;

(14) Up to twenty positions at each institution under the jurisdiction of the department of mental health and mental retardation that the department director determines to be primarily administrative or managerial; and up to fifteen positions in any division of the department, excluding administrative assistants to the director, division chiefs, or commissioners, which are within the immediate staff of a division chief or commissioner and which the director determines to be primarily and distinctively administrative and managerial;

(15) Noncitizens of the United States employed by the state, its counties or cities, as physicians or nurses who are duly licensed to practice their respective professions under the laws of Ohio, or medical assistants, in mental, tuberculosis, or chronic disease hospitals, or institutions;

(16) Employees of the governor's office;

(17) FIRE CHIEFS AND CHIEFS OF POLICE IN CIVIL SERVICE TOWNSHIPS APPOINTED BY BOARDS OF TOWNSHIP TRUSTEES UNDER SECTION 505.38 OR 505.49 OF THE REVISED CODE.

(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service, and upon the creation by the board of trustees of a civil service township civil service commission all persons in the employ of civil service township police or fire departments having ten or more full-time paid employees to be designated as the competitive class and the unskilled labor class.

(1) The competitive class shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts thereof, and upon the creation by the board of trustees of a civil service township of a township civil service commission all positions in civil service township police or fire departments having ten or more full-time paid employees, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by the promotion, reinstatement, transfer, or reduction, as provided in this chapter, and the rules of the director of administra-

tive services, by appointment from those certified to the appointing officer in accordance with this chapter.

(2) The unskilled labor class shall include ordinary unskilled laborers. Vacancies in the labor class shall be filled by appointment from lists of applicants registered by the director. The director or the commission shall in his rules require an applicant for registration in the labor class to furnish such evidence or take such tests as the director deems proper with respect to age, residence, physical condition, ability to labor, honesty, sobriety, industry, capacity, and experience in the work or employment for which he applies. Laborers who fulfill the requirements shall be placed on the eligible list for the kind of labor or employment sought, and preference shall be given in employment in accordance with the rating received from such evidence or in such tests. Upon the request of an appointing officer, stating the kind of labor needed, the pay and probable length of employment, and the number to be employed, the director shall certify from the highest on the list, double the number to be employed, from which the appointing officer shall appoint the number actually needed for the particular work. In the event of more than one applicant receiving the same rating, priority in time of application shall determine the order in which their names shall be certified for appointment.

Sec. 505.38. (A) In each township or fire district which has a fire department, the head of such department shall be a fire chief, appointed by the board of township trustees. The board shall provide for the employment of such fire fighters as it ~~deems~~ CONSIDERS best, and shall fix their compensation, provided, no person shall, after July 1, 1970, be appointed as a permanent full-time paid member of the fire department of any township, unless such person has received a certificate issued by the state board of education under section 3303.07 of the Revised Code evidencing his satisfactory completion of a fire fighter training program. Such appointees shall continue in office until removed therefrom as provided by sections 733.35 to 733.39 of the Revised Code. To initiate removal proceedings, and for such purpose, the board shall designate the fire chief or a private citizen to investigate the conduct and prepare the necessary charges in conformity with sections 733.35 to 733.39 of the Revised Code.

In each township not having a fire department, the board of trustees shall appoint a fire prevention officer who shall exercise all of the duties of a fire chief except those involving the maintenance and operation of fire apparatus.

The board of trustees may fix such compensation as it ~~deems~~ CONSIDERS best. Such appointee shall continue in office until removed therefrom as provided by such sections. The provisions of section 505.45 of the Revised Code shall extend to such officer.

In case of the removal of a fire chief or any member of the fire department of a township or district, an appeal may be had

from the decision of the board to the court of common pleas of the county in which such township or district fire department is situated, to determine the sufficiency of the cause of removal. Such appeal from the findings of the board shall be taken within ten days.

No person shall receive an appointment under this section after January 1, 1970, unless he has, not more than sixty days prior to receiving such appointment, passed a physical examination, given by a licensed physician, showing that he meets the physical requirements necessary to perform the duties of the position to which he is appointed as established by the board of township trustees having jurisdiction over the appointment. The appointing authority shall, prior to making any such appointment, file with the police and firemen's disability and pension fund a copy of the report or findings of said licensed physician. The professional fee for such physical examination shall be paid for by the board of township trustees.

(B) Division (A) of this section shall not apply to any township having a population of ten thousand or more persons residing within the township and outside of any municipal corporation, which has its own fire department employing ten or more full-time paid employees, and which has a civil service commission established under division (B) of section 124.40 of the Revised Code. Such township shall comply with the procedures for the employment, promotion, and discharge of fire fighters provided by Chapter 124. of the Revised Code, EXCEPT THAT THE BOARD OF TOWNSHIP TRUSTEES OF THE TOWNSHIP MAY APPOINT THE FIRE CHIEF, AND ANY PERSON SO APPOINTED SHALL BE IN THE UNCLASSIFIED SERVICE UNDER SECTION 124.11 OF THE REVISED CODE AND SHALL SERVE AT THE PLEASURE OF THE BOARD. A PERSON APPOINTED FIRE CHIEF UNDER THESE CONDITIONS WHO IS REMOVED BY THE BOARD OR WHO RESIGNS FROM THE POSITION IS ENTITLED TO RETURN TO THE CLASSIFIED SERVICE IN THE TOWNSHIP FIRE DEPARTMENT, IN THE POSITION HE HELD JUST PRIOR TO HIS APPOINTMENT AS FIRE CHIEF. The board of township trustees shall determine the number of personnel required and establish salary schedules and conditions of employment not in conflict with Chapter 124. of the Revised Code. No person shall receive an original appointment as a permanent full-time paid member of the fire department of such a township after the effective date of this section AUGUST 9, 1974, unless he has received a certificate issued by the state board of education under section 3303.07 of the Revised Code evidencing his satisfactory completion of a fire fighter training program. Persons employed as fire fighters in such township on the effective date of this section AUGUST 9, 1974, shall not be required to pass a competitive examination or a fire fighter training program in order to retain their employment, but such persons

shall be eligible for promotion only by compliance with the provisions of Chapter 124. of the Revised Code.

Sec. 505.49. (A) The township trustees by a two-thirds vote of the board may adopt rules and regulations necessary for the operation of the township police district, including a determination of the qualifications of the chief of police, patrolmen, and others to serve as members of the district police force.

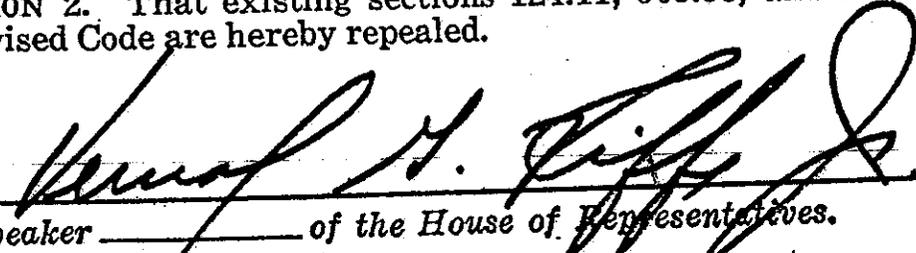
The township trustees by a two-thirds vote of the board shall appoint a chief of police for the district, determine the number of patrolmen and other personnel required by the district, and establish salary schedules and other conditions of employment for the employees of the township police district. The chief of police of the district shall serve at the pleasure of the township trustees and shall appoint patrolmen and such other personnel as the district may require, subject to the rules ; regulations, and limits as to qualification, salary ranges, and numbers of personnel established by the township board of trustees. The township trustees may include in the township police district and under the direction and control of the chief of police, any constable appointed pursuant to section 509.01 of the Revised Code, or designate the chief of police or any patrolman appointed by him as a constable, as provided for in section 509.01 of the Revised Code, for the township police district.

A patrolman, other police district employee, or police constable, who has been awarded a certificate attesting to satisfactory completion of an approved state, county, or municipal police basic training program, as required by section 109.77 of the Revised Code, may be removed or suspended only under the conditions and by the procedures in sections 505.491 to 505.495 of the Revised Code. Any other patrolman, police district employee, or police constable shall serve at the pleasure of the township trustees. In case of removal or suspension of any appointee an appeal may be had from the decision of the board to the court of common pleas of the county in which the district is situated, to determine the sufficiency of the cause of removal or suspension. Such appeal shall be taken within ten days of written notice to the appointee of the decision of the board.

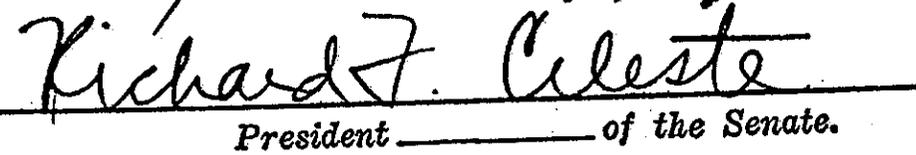
(B) Division (A) of this section does not apply to any township having a population of ten thousand or more persons residing within the township and outside of any municipal corporation, which has its own police department employing ten or more full-time paid employees, and which has a civil service commission established under division (B) of section 124.40 of the Revised Code. Such township shall comply with the procedures for the employment, promotion, and discharge of police personnel provided by Chapter 124. of the Revised Code, EXCEPT THAT THE BOARD OF TOWNSHIP TRUSTEES OF THE TOWNSHIP MAY APPOINT THE CHIEF OF POLICE, AND ANY PERSON SO APPOINTED SHALL BE IN THE UNCLASSIFIED SER-

VICE UNDER SECTION 124.11 OF THE REVISED CODE AND SHALL SERVE AT THE PLEASURE OF THE BOARD. A PERSON APPOINTED CHIEF OF POLICE UNDER THESE CONDITIONS WHO IS REMOVED BY THE BOARD OR WHO RESIGNS FROM THE POSITION SHALL BE ENTITLED TO RETURN TO THE CLASSIFIED SERVICE IN THE TOWNSHIP POLICE DEPARTMENT, IN THE POSITION HE HELD PREVIOUS TO HIS APPOINTMENT AS CHIEF OF POLICE. The board of township trustees shall determine the number of personnel required and establish salary schedules and conditions of employment not in conflict with Chapter 124. of the Revised Code. Persons employed as police personnel in such township on the effective date of this section AUGUST 9, 1974, shall not be required to pass a competitive examination or a police training program in order to retain their employment, but such persons shall be eligible for promotion only by compliance with the provisions of Chapter 124. of the Revised Code. This division does not apply to constables appointed pursuant to section 509.01 of the Revised Code.

SECTION 2. That existing sections 124.11, 505.38, and 505.49 of the Revised Code are hereby repealed.



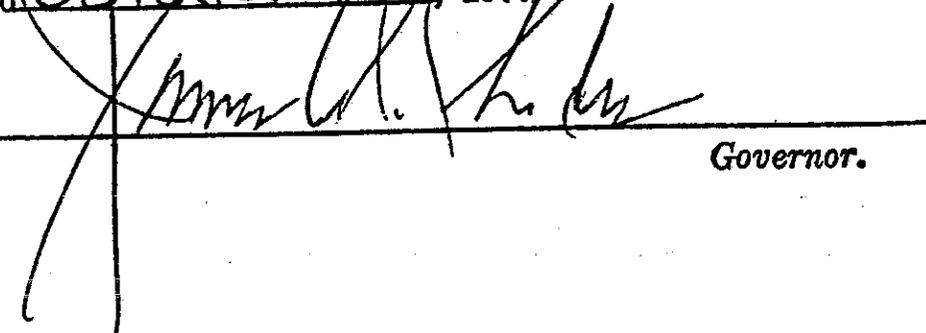
 Speaker _____ of the House of Representatives.



 President _____ of the Senate.

Passed September 22, 1977

Approved October 14, 1977



 Governor.