



COUNTY ADVISORY BULLETIN

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COUNTY PERSONNEL OPTION

INTRODUCTION

On July 26, 1991, Governor Voinovich signed Am. Sub. HB 298, the FY 1992-93 state budget bill. As an appropriation measure, HB 298 became effective immediately.

The act includes major changes in personnel law including removal of the authority for the Ohio Department of Administrative Services (ODAS) to charge counties for personnel services and provisions for The option of establishing a local county personnel department to perform the personnel functions of ODAS.

BACKGROUND

For the past ten years the County Personnel Association and CCAO have been working in the General Assembly to obtain authority for counties to perform the personnel functions of ODAS locally. For reporting agencies, dealing with ODAS on establishment of class plans, position descriptions, testing, appointments, disciplinary actions, lay-offs and terminations has been a frustrating and expensive process. Conducting business by mail and long distance telephone usually lengthens time frames. Dealing with statewide class plans, regulations and procedures often does not fit local needs.

In July of 1989, as a state cost saving measure and in response to federal audit exceptions, the General Assembly required ODAS in HB 111 to charge counties for the personnel services which the state had been rendering and funding for decades. Pursuant to the law, ODAS devised a system of charges and began billing counties in July 1990. Counties challenged the charge back method and CCAO continued to work to remove the charges from the law, contending that counties had no alternative but to accept the services and to pay for them even though they had no control over the scope, quality or cost of those services. With the cooperation of ODAS and the Governor's office, the General Assembly heeded the repeated requests of counties to remove the charges and to give counties the option to control personnel functions locally in Am. Sub. HB 298.

GENERAL SUMMARY OF THE NEW LAW

Am. Sub. HB 298 gives each Board of County Commissioners the option once every two years to establish a county personnel department to assume the duties and responsibilities of the director of the Ohio Department of Administrative Services for oversight of the civil service system pursuant to ORC 124 for those county employees for whom the commissioners are the appointing authority or co-appointing authority. All other elected officials, boards and agencies are then given the option to choose to receive services from the county personnel department or continue under ODAS supervision. Every two years thereafter the Board of Commissioners has the option of disbanding the county personnel department and individual officials boards or agencies have the option to remove themselves from jurisdiction of the county department and return to ODAS supervision. Even for those officials who choose to receive services from the county personnel department, the law does not give the department the authority to limit the right of the official to hire, fire and compensate employees of that official.

Am. Sub. HB 298 does not specify how a county personnel department is to be structured, how it is to be funded or how it should operate. It merely makes the county personnel department responsible for enforcement of the personnel provisions of ORC 124. The law does not change the authority and jurisdiction of the state personnel board of review. Employees in a county which establishes a county personnel department will continue to have the right to appeal to the state personnel board of review unless they bargain that right away in a collective bargaining contract. The law requires ODAS to periodically audit the county personnel system and resume supervision if non-compliance with ORC 124 is found and is not corrected. The law also makes the county responsible for any loss of federal funds incurred by the failure of the county personnel department to meet federal merit system standards.

The county personnel option will allow more flexibility and local control for counties which have the fiscal and human resources to shoulder the significant responsibilities entailed in enforcing civil service laws locally.

COUNTY PERSONNEL OPTION (ORC 124.14)

ORC 124.14(G)(1) and (2) - allows any board of commissioners to establish a county personnel department to assume the powers and duties of the director of ODAS for employees for whom the commissioners are the appointing authority or co-appointing authority.

ORGANIZATION OF CPD

A county personnel department would be directly under the control of the Board of County Commissioners who would appoint the director and all employees. There is no prescribed organizational structure. There are no requirements regarding number of employees or the duties or qualifications of individual employees. Such employees would be in the classified civil service because they are not specifically excluded by law, but class plans,

specifications and salaries would be at the discretion of the Board of Commissioners. The director should be someone knowledgeable in civil service law and procedures and the number of employees should be adequate to perform the policy making, processing and record keeping necessary to carry out the functions of the civil service system locally. Access to expert legal services through the county prosecuting attorney or by hiring an attorney on the staff of the CPD with the prosecutor's cooperation is a must.

WHO IS COVERED BY THE COUNTY PERSONNEL DEPARTMENT

-- Automatically, only those employees for whom the Board of Commissioners is the appointing authority or co-appointing authority i.e. commissioners office, any special offices set up by the commissioners (e.g. office of budget, development department, accounting department, etc.), the county home, building department, dog warden, department of human services, child support enforcement agency (unless operated by court or prosecutor).

-- If an elected official or a board takes action to receive services from the county personnel department, then the CPD will take responsibility for enforcing ORC 124 for all employees of that official or board including: auditor, clerk of courts, coroner, engineer, judge, prosecuting attorney, recorder, sheriff, treasurer, children services board, alcohol, drug addiction and mental health services board, board of mental retardation and developmental disabilities, county health department, etc. If an elected official or board does not choose to receive services from the CPD, the employees of that official or board remain under the jurisdiction of ODAS and the CPD has no authority over or responsibility for those employees.

POWERS OF ODAS TO BE ASSUMED BY CPD (ORC 124.04)

-- prepare, conduct and grade competitive examinations and unstructured, non-competitive examinations

-- prepare eligible lists of persons qualified for appointment to positions

-- prepare, amend and maintain class plans and class specifications

-- to assign covered employees to proper classification

-- to develop and conduct personnel recruitment

-- to develop and conduct personnel training programs in cooperation with appointing authorities

-- to appoint such examiners, inspectors, clerks and other assistants as are necessary to carry out the functions of the department

-- to keep a journal of final decisions regarding classification of positions and assignment

of employees to classifications

POWERS AND DUTIES OF THE DIRECTOR OF ODAS TO BE ASSUMED BY CPD (ORC 124.09)

-- prescribe, amend and enforce administrative rules for the purpose of carrying out the functions, powers and duties of the department

-- keep records of all applications and examinations, open to inspection of the public.

-- prepare, continue and keep in the office a complete roster of all persons in the classified service

-- approve establishment of all new positions

-- make investigations concerning all matters touching the enforcement and effect of chapter 124 of the revised code (in other words, the DAS director is responsible for seeing that the civil service system and the merit system contained in ORC 124 are enforced appropriately for all employees of the state and its subdivisions)

WHAT A COUNTY PERSONNEL DEPARTMENT CAN DO

-- replace the ODAS rules and procedures with local rules and procedures as long as they do not violate ORC 124

-- enforce civil service law and be responsible for maintaining merit selection

-- develop class plans, and position descriptions for participating employees including county department of human services (ORC 124.14(E)(3) exempts employees of county human services departments in counties where a county personnel department is established under ORC 124.14(G) from the state class plan and salary schedule)

-- assist with recruitment and selection of employees to the extent desired by participating appointing authorities

-- develop necessary plans and systems for compliance with affirmative action and other federal requirements

-- develop and maintain personnel policies, procedures and grievance procedures

-- keep and manage central personnel records on employment history, vacation, sick leave, etc. to the extent desired by appointing authorities

-- provide liaison with personnel board of review, workers' compensation, unemployment compensation, etc.

- manage and maintain employee benefit systems including health insurance, etc.
- coordinate and provide liaison with appropriate officials for collective bargaining and managing contracts
- receive reports from participating MRDD board (ORC 124.20 provides that personnel actions of a county board of Mental Retardation/Developmental Disabilities traditionally submitted to ODAS be submitted to the county personnel department with jurisdiction, if one exists)

WHAT A COUNTY PERSONNEL DEPARTMENT CAN NOT DO

- ignore civil service law
- all local policies and procedures must conform to ORC 124 and pertinent case law
- do away with merit selection and testing.
- Article XV Section 10 of the Ohio Constitution states in part, "all appointments and promotions in the civil service of the state, the several counties and the cities shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations".
- force a class plan or salary schedule on a county elected official
- ORC 124.14(B) lists the exceptions to standard class plans under control of the director of ODAS. Specifically, ORC 124.14(B)(4) exempts from the standard class plan "any position for which authority to determine compensation is given by law to any other individual or entity." Since county elected officials are given authority to hire and compensate employees in their respective sections of ORC 300 and by case law pursuant to those sections, the CPD would have no authority to apply standard classes and salary ranges to the employees of elected officials except by agreement of the individual official.
- create a system for hearing employees appeals which bypasses the state personnel board of review
- (ORC 124.14 requires that the SPBR retain jurisdiction over employees subject to a CPD)
- change which positions are in the classified or unclassified service
- (classified and unclassified positions are specified in the law)

FLEXIBILITY TO CONTRACT FOR SERVICES

ORC 124.14(G)(2) allows a Board of Commissioners to contract with ODAS, another

political subdivision or an appropriate public or private entity to provide competitive testing services or other appropriate services. This means one county could set up a personnel department and one or more other counties could contract for all personnel services or any one or group of services. A county could contract with another county, a city, the state or even a private company to provide testing or recruitment, or computer services, or establishment of class plans, etc. in any combination desired.

It is very important for commissioners to understand that, no matter what services they contract for or with whom, the commissioners remain responsible for seeing that civil service laws and merit system standards are enforced.

HOW ELECTED OFFICIALS AND BOARDS RELATE TO CPD

The county personnel option is actually a double option. First the Board of Commissioners has the option to establish a CPD. Second, each elected official or board has the option to receive services from the CPD or remain under the jurisdiction of ODAS. This option is available to each official or board every two years on July 1. The option also exists to terminate the relationship, once established, every two years on July 1. If an elected official or board opts to receive services from the CPD, the CPD becomes fully responsible for seeing that civil service laws are followed by the elected official or board in dealing with employees, just as ODAS is now responsible. This does not allow the CPD to control who is hired or fired or the salary of that individual, only that the law is followed in those regards (see section on What a CPD Can Not Do). The scope and extent of services used by an individual official or board could be negotiated locally (see section on What a CPD Can Do).

WHAT COMMISSIONERS SHOULD CONSIDER BEFORE DECIDING WHETHER TO ESTABLISH A COUNTY PERSONNEL DEPARTMENT

Does the County Have the Resources to do the Job?

PERSONNEL

-- the department must be operated by a director who knows civil service laws and procedures well enough to keep the county out of legal tangles

-- enough qualified people must be hired to develop rules and policies, provide testing or a merit system which will stand a legal test (unless the commissioners contract for such services), build and maintain a record keeping system, deal with contracts and deal with the state personnel board of review

-- access to expert legal advice on personnel matters with the office of the county prosecuting attorney or on staff

FINANCIAL

-- all of the above will cost money, not just for personnel, but for forms, records, computers, etc. If the county already has a personnel office performing most of the functions allowable under the law prior to July 1991, the additional expense would be to develop and maintain local rules and to provide for testing merit selection. All of this will be general fund expense (DAS will no longer be charging counties for personnel services, unless a CPD contracts with DAS for specific services)

PHYSICAL

-- the county will need office space, equipment, record keeping equipment, etc. to support all of this personnel activity

Personalities/County Structure

PERSONALITIES

-- the more of county government which decides to participate in a CPD, the cheaper the CPD becomes. Commissioners should discuss the possibility of a CPD with all other officials and boards, to determine the support for establishment of a CPD and the number of offices which would join. How much opposition and ill will might result?

STRUCTURE

-- is the county structured administratively, fiscally and physically in such a way that a central personnel operation would work? Will a central system cause records or computer problems?_

RESPONSIBILITY

LEGAL

-- once a CPD is established, the department and the commissioners are responsible for the enforcement of civil service laws. Currently, if an office is not using testing or other appropriate merit selection, is not using a class plan or position descriptions, ODAS is legally responsible for any violations of civil service law. If a CPD is established, the CPD and the commissioners are responsible for violations of civil service law.

RECORD KEEPING

-- currently, if employment records, evaluations, disciplining records, etc. are not followed and kept, it is ODAS responsibility. They must determine retention points and oversee layoffs. If a CPD is established these are CPD/commissioner responsibilities. The CPD would also become responsible for maintaining records open to the public.

FINANCIAL

-- Federal Funds

-- besides the additional cost of operating a county personnel department, the law (ORC 124.14(G)(6)) makes counties financially liable for any loss of federal funds to human services or child support agencies for failure to adhere to merit system standards

-- Audits

-- ODAS is required to periodically audit a CPD for compliance with ORC 124. The county is responsible for half of the cost of the audit.

WHAT ARE THE WRONG REASONS FOR ESTABLISHING A COUNTY PERSONNEL DEPARTMENT?

-- just to get out from under ODAS (ODAS no longer has the authority to charge for services)

-- to get rid of civil service requirements (civil service requirements are contained in ORC 124 which the CPD must enforce)

-- to get rid of testing (testing is required by Article XV, Section 10 of the Ohio Constitution)

-- to revise salaries and classes downward (employees have property rights regarding reductions which they can defend in court)

-- to get out from under the state personnel board of review (the law specifically retains employees under a CPD within the jurisdiction of the SPBR)

The right reason to establish a CPD is that the county has the personnel, physical and financial resources, along with the intent to operate civil service efficiently and effectively at the local level.

EXERCISING THE OPTION TO ESTABLISH A CPD

January 1, 1992 (Section 170 of Am. Sub. HB 298)

The first opportunity to establish a CPD is January 1, 1992. To do so, the Board of Commissioners must submit an official copy of a resolution passed by a majority of the board establishing a county personnel department effective January 1, 1992 to the director of the Ohio Department of Administrative Services by certified mail by October 1, 1991. The director must acknowledge receipt by certified mail within 10 days. The Board of Commissioners must be prepared to take over personnel operations on January 1, 1992. It would make sense to include with the commissioners notice to ODAS, certified notice

from all other elected officials and boards which are electing to receive services from the new CPD.

July 1 of Odd Numbered Years (ORC 124.14(G))

Any Board of Commissioners which has not established a CPD on January 1, 1992 may do so on July 1 in any odd numbered year (coincides with beginning of state budget biennium) with official notice to ODAS by March 1 of that year. Any elected official or board may elect to receive services effective July 1 of any odd numbered year, with notice by March 1.

DISBANDING A COUNTY PERSONNEL DEPARTMENT

The Board of County Commissioners may disband a CPD effective July 1 of any odd numbered year with notice by certified mail to ODAS by March 1 of that year. All county employees would return to ODAS jurisdiction.

ELECTED OFFICIAL/BOARD OPTION TO WITHDRAW FROM CPD

Any participating elected official or board may elect to withdraw from a CPD effective July 1 of any odd numbered year with certified notice to the Board of Commissioners and the director of ODAS by March 1 of that year. Employees of such an official or board would return to the jurisdiction of ODAS.

FURTHER INFORMATION

For further information on the county personnel option, contact the County Commissioners Association of Ohio at 614/221-5627 or the Ohio Department of Administrative Services, Division of Personnel at 614/466-3455.