

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Brent A. Runge,

Appellant,

v.

Case No. 08-WHB-03-0065

Hocking County Board of Commissioners,

Appellee.

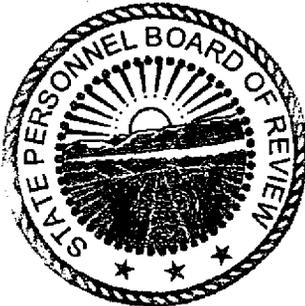
ORDER

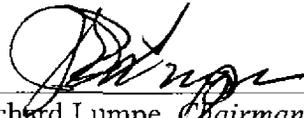
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of subject matter jurisdiction, pursuant to O.R.C. § 124.341.

Lumpe - Aye
Booth - Aye
Sfalcin - Aye



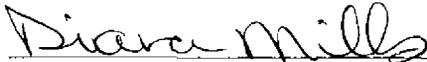


J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, November 18, 2008.



Diana Mills
Clerk

NOTE: Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

11-18-08

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Brent A. Runge

Case No. 08-WHB-03-0065

Appellant

v.

October 22, 2008

Hocking County Board of Commissioners

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant's notice of appeal, filed on March 25, 2008; Appellant's Response to this Board's Procedural Order and Questionnaire, filed on May 19, 2008; and Appellee's Response to Appellant's Questionnaire, filed on June 2, 2008.

Appellant Runge was asked in this Board's Procedural Order and Questionnaire to file copies of any written reports he made with regard to his alleged whistleblower claim. In his response to this Board, Appellant Runge filed several documents as his response. Appellee has alleged in its response that none of the documents provided by Appellant Runge meet the requirements of the whistleblower statute.

Section 124.341 of the Ohio Revised Code is commonly referred to as the "whistleblower" statute. That statute states as follows, in pertinent part:

(A) If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority. In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a

written report with the office of internal auditing created under section 126.45 of the Revised Code.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report with the supervisor, appointing authority, or the office of internal auditing, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission.

When reviewing whistleblower appeals, courts have held that compliance with the above pre-requisites are mandatory in order to invoke the protection afforded by the statute. In *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, the Franklin County Court of Common Pleas restated these conditions as prerequisites to whistleblower jurisdiction under section 124.341 of the Ohio Revised Code. The court in *Haddox* noted that “[j]urisdiction to invoke whistleblower protection requires that the whistleblower show that she 1) made a written report, 2) transmitted the written report to her supervisor, appointing authority, the state inspector general, or other appropriate legal official; and 3) identified a violation of state or federal statute, rule, or regulation, or misuse of public resources in the report.” See *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker’s Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *State ex rel Cuyahoga Cty. SPBR*, 82 Ohio St. 3d 496, 696 N.E.2d 1054 (1998) and to *Chubb v. Ohio Bur. Of Worker’s Comp*, 81 Ohio St. 3d 275, 690 N.E.2d 1267 (1998)).

The *Haddox* court went on further to explain that “the requirement of a written communication, specifically addressed to an appropriate individual, is an essential element of whistleblower protection and will be strictly applied.” *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bureau of Worker’s Compensation*, 1999 Ohio App. LEXIS 2614, Franklin App. No. 98AP-997 (June 10, 1999) unreported citing to *Kuch v. Structural Fibers, Inc.*, 78 Ohio St. 3d. 134, 141, 677 N.E.2d 308 (1997)). Therefore, in order to invoke this Board’s jurisdiction, an employee must first establish that he or she complied with the reporting requirements of section 124.341 of the Ohio Revised Code.

In the present case, Appellant Runge’s response to the questionnaire indicated that he wrote nine letters to satisfy the whistleblower requirements; however, in reviewing those, none of them meet the pre-requisites. Most of the writings do not contain a noted violation of any statute, rule or regulation. As held in the *Haddox* case, *supra*, the Exhibits noted as verbal or in an open meeting do not qualify as documents under the statute, as it is clear that an employee must make a **written** report to qualify under the whistleblower statute.

In looking at the Exhibits as noted by Appellant Runge as being in writing, none of them meet the requirements of the statute. Exhibit 1 is a letter to the Commissioners, but it does not allege a violation of any statute, rule or regulation, as it does not mention nor does it cite to any. Exhibit 4 contains several documents, two of which are addressed to the Prosecuting Attorney. However, the statutes cited in the letters, sections 121.22 and 3.12 of the Ohio Revised Code, are civil statutes and do not impose any criminal liabilities. Therefore, the writing does not meet the requirement of the whistleblower statute since there is no criminal offense alleged.

The only writing in Exhibit 5 from Appellant Runge is a memo to Mr. Green and it again contains no reference or citation to any alleged violation of any statute, rule or regulation. Exhibit 8 is addressed to the County Commissioners, but again, no reference or citation to any alleged violation of any statute, rule or regulation is noted. Exhibit 10 is addressed not to the County Commissioners, but to a Ms. Ogg. Appellant Runge is asking for information and once again, no reference or citation to any alleged violation of any statute, rule or regulation is contained in the writing. Exhibit 11 is addressed to the Prosecuting Attorney, but it is a request for a formal opinion, not a report. Even if it were construed to be a report, the statutes referenced, sections 5502.26 to 5502.271 of the Ohio Revised Code, do not impose

any criminal penalties, so a violation of those statutes is not a criminal offense. Therefore, this writing do not comport to the requirements of section 124.341 of the Ohio Revised Code.

Exhibit 12 consists of a letter to Appellant Runge, which certainly does not meet the requirements of section 124.341 of the Ohio Revised Code. Also included is a letter to a Mr. Starner, from Appellant Runge, but once again, the letter does not allege any violation of any statute, rule or regulation, nor does it even cite to any of those. Exhibit 13 is a letter to the Prosecuting Attorney from Appellant Runge, but it concerns a letter of insubordination. The only reference to a statute is to section 121.22 of the Ohio Revised Code. Again, that is a civil statute which does not impose any criminal liability or offense. Lastly, Exhibit 14 contains a number of documents, but again, most do not allege any violation of statute, rule or regulation, other than that of section 121.22 of the Ohio Revised Code, which as stated previously, does not impose any criminal liability or offense.

Therefore, since the courts have held that strict compliance is necessary under the whistleblower statute, Appellant Runge's documents do not meet those requirements. In any whistleblower case before this Board, the Appellant bears the burden of establishing a prima facie case that he or she has complied with the whistleblower statute by making a proper report pursuant to the statute. In the instant case, Appellant Runge has failed to meet his burden, as none of the documents he has provided to this Board in his response to this Board's questionnaire qualify as a report under section 124.341 of the Ohio Revised Code.

Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of subject matter jurisdiction under section 124.341 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge