

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

Guy Tomko,

*Appellant,*

v.

Case No. 09-REM-07-0318

Cuyahoga County Board of Commissioners,

*Appellee.*

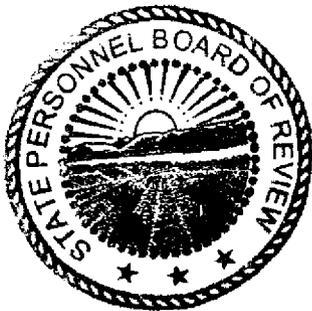
**ORDER**

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. § 124.34 (A) (3).

Lumpe - Aye  
Sfalcin - Aye  
Tillery - 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, December 10, 2009.

  
\_\_\_\_\_  
Michael Amos  
*Clerk*

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

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

Guy Tomko,

Case No. 09-REM-07-0318

*Appellant*

v.

November 6, 2009

Cuyahoga Co, Board of Commissioners,

Christopher R. Young

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on November 6, 2009, upon the Appellee's motion to dismiss filed on October 27, 2009. To date, the Appellant has not filed any memorandum in opposition to Appellee's motion to dismiss.

The Appellee asserts in its motion to dismiss that this Board lacks jurisdiction to consider this matter pursuant to Ohio Revised Code section 124.34(A) because the Appellant's removal was based upon his conviction of a felony.

For clarification, the Appellant was employed by the Cuyahoga County Board of Commissioners, Central Services Department ("BOCC") as a Custodial Worker Supervisor. On April 27, 2009, Appellant appeared in the Common Pleas Court of Williams County, Ohio, and pleaded guilty to a felony. Specifically, Appellant pleaded guilty to the offense of Importuning, a felony of the fifth degree. See R.C. Section 2907.07 (D) (2). The Court Journal Entry was entered on May 27, 2009, and is attached to motion to dismiss as Exhibit "A".

Appellant was placed on unpaid administrative leave by the BOCC pending a pre-disciplinary conference, to be held on June 2, 2009. Following the pre-disciplinary conference, it was determined that Appellant had violated section 4.00 of the Cuyahoga County policies and procedures manual. Section 4.00 specifically states that "performing an act which constitutes a felony under the laws of the United States, the state of Ohio, or the jurisdiction in which the act was committed" is a removable offense, attached as Exhibit "B" in Appellee's motion to dismiss. Accordingly, the Appellant was removed from his employment with the BOCC effective June 29, 2009.

Pursuant to R.C. section 124.34 (A), "a person convicted of a felony immediately forfeits the person's status as a classified employee in any public employment on and after the date of conviction." Moreover, the statute specifically indicates that there is no right of appeal to this Board under such circumstances:

An officer or employee **may not appeal to the state personnel board of review** or the commission any disciplinary action taken by an appointing authority as a result of the officer's or employee's conviction of a felony. (Emphasis added)

A "felony" is defined by this Section, *inter alia*, as a felony under the laws of this or any other state or the United States that is a crime of moral turpitude....." See R.C. Section 123.34 (A). "Moral turpitude" is defined as an "act or behavior that gravely violates moral sentiment or accepted standards of the community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others". *Davidson, D. P. M. v. State Med. Bd. of Ohio* (May 7, 1998), 10th Dist. No. 97APE08-1036, 1998 WL 226436, quoting Black's Law Dictionary (6 Ed. 1991) at page 698.

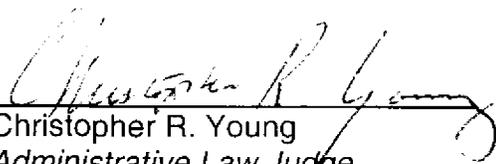
Pursuant to R. C. section 124.34 (A) as used in this Division, a "felony" means any of the following:

- (1) A felony that is an offense of violence as defined in section 2901.01 of the Revised Code;
- (2) A felony that is a felony drug abuse offense as defined in section 2925.01 of the Revised Code;
- (3) A felony under the laws of this or any other state or the United States that is a crime of moral turpitude;** (Emphasis added).
- (4) A felony involving dishonesty, fraud, or theft;
- (5) A felony that is a violation of section 2921.05, 2921.32, or 2921.42 of the Revised Code.

In the case at hand, the Appellant's admitted crime was for soliciting sex from an individual he believed to be a 14 year old girl in an Internet chat room. When in fact, the individual the Appellant was soliciting was a member of the Williams County Sheriff's Department Internet crimes against children unit posing as the 14-year-old girl on the Internet. As a result, the Appellant pleaded guilty to a fifth degree felony charge of Importuning and was required to register as a sex offender. As asserted by the Appellee, which the undersigned concurs with, a 43-year-old man requesting sex from someone he believed to be a 14-year-old girl is "behavior that gravely violates moral sentiment or accepted standards of the community". As such, the undersigned concludes that the Appellant's felony offense is in fact a crime of moral turpitude under R.C. section 124.34(A) (3), and therefore, the Appellant does not have a right to appeal to this Board.

### RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** the Appellee's motion to dismiss and **DISMISS** this appeal for lack of subject matter jurisdiction pursuant to R.C. 124.34(A) (3).

  
Christopher R. Young  
Administrative Law Judge

CRY: