

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JOHN HOPKINS,

Appellant,

v.

Case No. 11-ABL-02-0061

GEAUGA COUNTY CORONER,

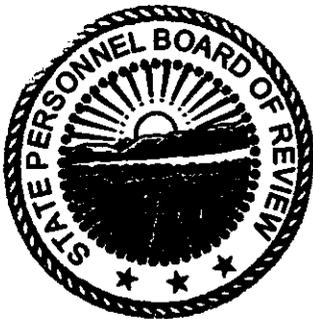
Appellee

ORDER

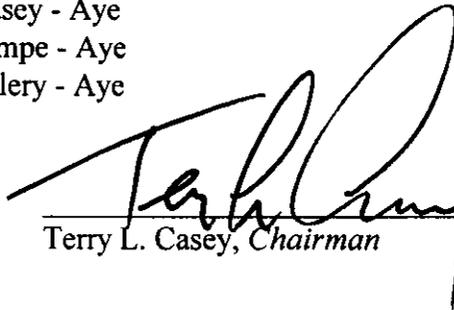
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 appeal is **DISMISSED** due to a lack of jurisdiction by this Board to consider Appellant Hopkins' appeal on the basis that he was employed pursuant to a purchased personal services contract which took him out of the realm of a civil service employee, or in the alternative, that he was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code over which this Board does not possess jurisdiction.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *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 constitutes ~~(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, September 19, 2012.




Erin E. Conn
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**

John Hopkins

Case No. 11-ABL-02-0061

Appellant

v.

May 16, 2012

Geauga County Coroner

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on August 10, 2011. Present at the hearing were the Appellant, John Hopkins, represented by Joseph M. Hegedus, Attorney at Law, and Appellee Geauga County Coroner Kevin Chartrand, M.D., represented by Susan T. Weiland and Laura A. LaChapelle, Assistants Prosecuting Attorney.

The purpose of the record hearing was to determine if Appellant Hopkins was or was not an unclassified employee at the time of his job abolishment. Appellee alleged Appellant Hopkins was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code. If this Board determines that Appellant Hopkins was an unclassified employee at the time of his job abolishment, then the appeal will be dismissed as this Board does not possess jurisdiction over the job abolishment of an unclassified employee. If, however, this Board determines that Appellant Hopkins was a classified employee, then another hearing will be convened on the merits of the job abolishment.

STATEMENT OF THE CASE

Appellee's first witness was Kevin Chartrand. He testified that he is a self-employed physician and has been the county coroner since August 30, 2006, with the most recent election taking place in 2008. Dr. Chartrand identified Appellee's Exhibit 1 as a table of organization dated February 28, 2011, showing two full-time investigators and one part-time investigator. He stated the investigators reported directly to him and that the Deputy Coroner acted in his stead during his absence. The Chief Investigator, the position held by Appellant Hopkins, had a supervisory

role over the other investigators. The investigators set their own schedule and divided the work between them without any input from Dr. Chartrand.

In looking at Appellee's Exhibit 2, Dr. Chartrand identified it as the position description for an Investigator/Clerk and testified that it was an example of Appellant Hopkins' duties, as Appellant Hopkins did more than what was listed. Dr. Chartrand testified Appellant Hopkins coordinated the other investigators' work and schedule and he ran the day-to-day operations of the office. Dr. Chartrand testified that, upon taking office, Appellant Hopkins told him he did the budget preparation and maintained the office accounts and made purchases. Appellant Hopkins was in charge of payroll and tracked vacation, sick and personal time usage. He had keys to Dr. Chartrand's office and to the three rooms in the office which housed the evidence room, supplies and tools and the office area. Appellant Hopkins began his employ under the former coroner in October, 1999.

Appellee's Exhibit 3 was identified as a resume submitted by Appellant Hopkins. His resume lists that he "conducts death investigations, manages the entire operation of the office and supervises fellow investigators." It also states he was "the payroll and budget officer, records custodian and statistician as well as the primary liaison for the office with other committees and coalitions." Dr. Chartrand testified Appellant Hopkins supervised the other investigator, Mr. Boyles, and at various times, the part-time person. He reviewed drafts of information for Dr. Chartrand's signature and had the freedom to talk to other investigators without input from Dr. Chartrand.

Appellee's Exhibit 5 was identified by Dr. Chartrand as a letter in which Appellant Hopkins requested that a BWC complaint be placed in his file and states that such "duty was typically his responsibility as Chief Investigator." Appellee's Exhibit 6 was identified by Dr. Chartrand as an Incident/Accident Report that was signed by Appellant Hopkins as supervisor to Mr. Boyles and dated January 14, 2009. Dr. Chartrand testified Appellant Hopkins signed sick and vacation leave requests as the supervisor and created a "to do" list for Mr. Boyles. He did these duties without input from Dr. Chartrand. Appellant Hopkins interviewed prospective applicants and made recommendations on hiring.

Appellee's Exhibit 7 was identified by Dr. Chartrand as a memorandum from the Budget Administrator, dated November 9, 2010, asking the Department Administrator to review the invoice for all employees' medical, dental and life insurance coverage for accuracy and to sign the pages for accountability and authorization to pay. Dr. Chartrand testified it was Appellant Hopkins who initialed the document on November 12, 2010 and was the one to sign the pages. Dr. Chartrand identified Appellee's Exhibit 8 as his mileage reimbursement voucher which Appellant Hopkins signed as the Department Head. He stated this was done as a check and balance since he did not want to sign his own voucher. Appellee's Exhibit 9 was identified by Dr. Chartrand as a Payroll Authorization Form, which allowed the named individuals to approve payroll and status change forms. The only two names appearing on the form were those of Dr. Chartrand and Appellant Hopkins. Appellee's Exhibit 10 was identified by Dr. Chartrand as a payroll form for April 12, 2010 and was signed by Appellant Hopkins and he also wrote in Dr. Chartrand's salary. Appellant Hopkins certified the payroll to be correct. Appellee's Exhibit 11 was identified as another payroll form, but on this one, Appellant Hopkins signed it on behalf of Dr. Chartrand.

Dr. Chartrand testified that Appellant Hopkins was responsible for the budget of the office as he opened and closed banking accounts, projected the needs of the office and ensured that the budget was fiscally sound. Dr. Chartrand testified he mostly let Appellant Hopkins handle the budget process and he had the authority to move funds from one place to another without approval from Dr. Chartrand. Appellant Hopkins managed and paid the bills. He would review the budget as it came in from the Commissioners and he made suggestions and modifications. Appellant Hopkins would keep Dr. Chartrand abreast of the budget, but for the most part, Dr. Chartrand did not pay much attention and Appellant Hopkins had the authority to do what was needed.

Appellee's Exhibits 12 through 17 were identified by Dr. Chartrand as invoices and authorizations signed by Appellant Hopkins to allow the amounts stated for insurances and medical premiums to be withdrawn from the named accounts. Appellee's Exhibit 18 was identified by Dr. Chartrand as the Auditor's Certification of Funds in the amount of \$1,250 for supplies which was requested and signed by Appellant Hopkins with his initials next to Dr. Chartrand's name. By doing so, Appellant Hopkins approved the opening of a blanket or named account. The date on the document was January 1, 2011. Dr. Chartrand testified Appellant Hopkins had the authority to print Dr. Chartrand's name and initial it. He did this on

Appellee's Exhibit 19, which was identified by Dr. Chartrand as a contract transmittal form authorizing an increase in a contract in the amount of \$2,400. It is signed by Appellant Hopkins without obtaining prior approval from Dr. Chartrand. Appellee's Exhibit 20 was identified as another contract transmittal form signed by Appellant Hopkins in the amount of \$50,400 and was again done without prior approval from the Dr. Chartrand. Appellee's Exhibit 21 was identified by Dr. Chartrand as a blanket purchase order for the 2011 year with Appellant Hopkins signing and initialing Dr. Chartrand's name for approval. Appellee's Exhibit 22 was identified by Dr. Chartrand as a form to close or reduce encumbrances which was signed by Appellant Hopkins. Dr. Chartrand testified Appellant Hopkins made this decision independently and stated Appellant Hopkins signed the form on behalf of the Appellee. Appellee's Exhibits 23 and 24 were identified as the Master Fixed Asset Listing which Appellant Hopkins approved or changed independently on behalf of the Appellee.

Dr. Chartrand testified that the budget hearings are held late in the year and usually Appellant Hopkins would notify Dr. Chartrand of when the hearings were and he would attend with Appellant Hopkins. Appellant Hopkins arranged the meeting with the Commissioners and did most of the presentation. In 2010, Dr. Chartrand testified he spoke at the hearing and introduced the budget as Appellant Hopkins gave him the floor. Dr. Chartrand further explained that at the time of the budget hearing, the climate in the office was not good, as there was a lot of anger and resentment. The Commissioners had cut a part-time position, so with a person down, time off requests were denied and he had to cover some investigations. There was tension between him and Appellant Hopkins and there was also an issue with the contract negotiations, specifically pay and longevity issues. As a result of all of that, Appellant Hopkins wanted Dr. Chartrand to do the budget presentation.

Appellee's Exhibit 27 was identified by Dr. Chartrand as a request to the Commissioners for approval of credit cards for the use of the office. The request was made by Appellant Hopkins and he signed the request as Agency/Department Head. Dr. Chartrand testified Appellant Hopkins ordered all of the equipment and supplies for the office and paid all of the bills. He did all of that independently without approval from Dr. Chartrand. Appellant Hopkins also entered into contracts on behalf of the office and contacted other coroner offices as a representative of Dr. Chartrand. He also attended meetings in Dr. Chartrand's stead and completed questionnaires on his behalf.

Appellee's Exhibits 28 and 29 were identified by Dr. Chartrand as paperwork for work-related injuries, which he never knew existed. Both forms were signed by Appellant Hopkins as Administrator and it was Appellant Hopkins who was the liaison between the Bureau of Workers Compensation and the office. Appellee's Exhibit 30 was identified as an asset inventory for values between \$25 and \$5000, which Dr. Chartrand testified Appellant Hopkins signed off on independently, as Dr. Chartrand stated he was not even aware of the existence of such a document.

Dr. Chartrand testified Appellant Hopkins drafted office policy, specifically the cell phone policy regarding the use of a cell phone. He stated the policies could not conflict with county policies. Appellant Hopkins had access to all mail, even that of the confidential mail addressed to Dr. Chartrand. He assisted in the preparation of verdicts and death certificates, but could not sign them since Appellant Hopkins is not a medical doctor. He attended trainings and seminars without the approval of Dr. Chartrand and he made a presentation to a bereavement group. Dr. Chartrand testified he did not micro-manage investigations, thus Appellant Hopkins had a lot of discretion and autonomy in conducting the investigations. Dr. Chartrand stated he relied on Appellant Hopkins to know when to release evidence and when to send a body for an autopsy. He also relied on Appellant Hopkins' reports in rendering his coroner's report.

On cross examination Dr. Chartrand identified Appellant's Exhibit A as the employment contract between the Appellee and Appellant Hopkins. Dr. Chartrand testified he did not sign the original contract, as he only signed an undated and non-notarized addendum. He acknowledged that Appellant Hopkins was in a bargaining unit and agreed that Appellant Hopkins did not discipline or evaluate other employees. In looking at Appellant's Exhibit B, Dr. Chartrand identified it as an excerpt from the county policy manual. He stated he never used the employee evaluation contained in the excerpt, nor did he instruct Appellant Hopkins to use it.

Dr. Chartrand testified Appellant Hopkins had complete authority to change the schedule. He stated he was not at the office everyday and he confirmed that all employees had keys to the office. Dr. Chartrand stated Appellant Hopkins did not hire nor fire any employees and he did not approve his own leave time. He clarified that Appellant Hopkins did approve the other investigator's leave, however. Dr. Chartrand testified that Appellant Hopkins and the other investigator were not usually in the office at the same time except during shift changes. When asked

about Appellee's Exhibit 18, the Auditor's Certification of Funds, Dr. Chartrand testified he did not understand the form as he never signed it or saw it.

On redirect examination, Dr. Chartrand testified he never changed the schedule for the investigators and that there were separate keys to separate parts of the office. He stated Appellant Hopkins monitored the funds, did the transfers of money and took care of the accounts. Dr. Chartrand testified that at times, he made editorial changes to the verdicts and certificates that Appellant Hopkins completed.

Appellant Hopkins testified he was working in the coroner's office when Dr. Chartrand became coroner in August 2006. He stated he never had any authority to hire or fire employees nor did he ever discipline any employees. He identified Appellant's Exhibit A as his employment contract and stated that the attached position description accurately describes his job duties. Appellant Hopkins testified he did not write any policies, including a cell phone policy. He explained that the Commissioners give each department a wish list and he then met with Dr. Chartrand to discuss the line items and the increases/decreases. He then returned the budget to the Commissioners with Dr. Chartrand's signature. Appellant Hopkins testified he only gave input into the budget and had no authority to act independently.

Appellant Hopkins stated he was very meticulous at keeping records and processing bills. He also opened accounts, blanket purchase orders and opened contracts in order to pay repetitive bills. Appellant Hopkins stated that the other investigator, Mr. Boyles, would pay bills in his absence. He testified that he and Mr. Boyles saw each other on Monday, Wednesday and Friday during the one-half to one hour briefing. He stated he felt compelled to ensure that Mr. Boyles was correctly doing investigations and that he only noted Mr. Boyle's time off, as it was Dr. Chartrand who actually approved the time off. Appellant Hopkins stated he and Mr. Boyles worked together to cover the hours that needed to be covered and he agreed he had the authority to set the work schedule.

Appellant Hopkins confirmed he had the authority to sign payroll, but had no authority to bind the coroner to a contract as he had to have the consent of Dr. Chartrand to seek a vendor contract. In looking at Appellee's Exhibits, Appellant Hopkins testified he had the authority to make sure there were enough funds in a certain account to cover the bills, but stated he had no authority to increase or decrease funds. He stated he always spoke with Dr. Chartrand before transferring

any funds and that the both of them decided together on how much money would be needed to open an account. Appellant Hopkins testified it was the Auditor's office that determined how much money would be returned at the end of the year and that he had no control over the amount. With regard to the credit card request, Appellant Hopkins testified he was only telling the Commissioners how many cards existed and that he had no discretion whatsoever in setting the amount of the card. He testified he completed the paperwork he was told to complete by Dr. Chartrand and that on certain forms, he just filled in information and used the same numbers that had always been used. For the asset inventory, Appellant Hopkins testified he was just confirming that the assets were there and that all of the other employees were constantly checking his work for any typos.

On cross examination Appellant Hopkins testified he reported directly to the coroner. He prepared the budget figures and monitored the budget as well as opening blanket accounts. He also followed up to ensure that bills were paid. Appellant Hopkins testified he had no latitude to approve or deny leave time, as the only authority he had was to put his initials on the supervisory line.

Appellant's next witness was Greg Boyles. He testified he had been employed with the Appellee for approximately seven years. He stated Appellant Hopkins never approved or denied his leave time and he never disciplined him. Mr. Boyles testified Appellant Hopkins did not have any supervisory duties over him and that it was common for both of them to review each other's work.

FINDING OF FACTS

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. At the time of Appellant Hopkins' job abolishment, he had been employed with the Appellee for approximately twelve years as Chief Investigator. He began working for Dr. Chartrand in August, 2006.
2. Appellant Hopkins was employed pursuant to an Employment Contract which set out the terms and conditions of his employment, including his job duties, his rate of pay (which was subject to negotiation not less than annually), the reasons he could be terminated and his benefits.

3. Appellant Hopkins reported directly to Dr. Chartrand and, according to Appellant Hopkins' own resume, he "supervised fellow investigators".
4. Appellant Hopkins independently set his own schedule and ran the day to day operations of the office and he signed documents denoting he was the supervisor of Mr. Boyles and the Administrator of the office.
5. Appellant Hopkins and Dr. Chartrand were the only two persons who could sign payroll and status change forms. Appellant Hopkins was the only person in the office who had signature authority for Dr. Chartrand.
6. Appellant Hopkins maintained all of the accounts for the office and made purchases. He authorized withdrawals from accounts without prior approval from Dr. Chartrand and signed for amounts of over \$50,000. He also requested and approved the use of office credit cards.
7. Appellant Hopkins prepared the budget, arranged for the meeting with the Commissioners and presented the budget to the Commissioners. He had the authority to transfer funds to different accounts in the budget. Dr. Chartrand had no knowledge of the Auditor Certification of Funds documents as Appellant Hopkins took care of completing that documentation.
8. Appellant Hopkins had keys to Dr. Chartrand's office as well as to the other three rooms comprising the office; he signed all of the documents relating to any workers' compensation claims; he had access to all mail, including the mail marked as "confidential" and addressed to Dr. Chartrand; and he had conducted his investigations with a lot of autonomy and very little monitoring by Dr. Chartrand.

CONCLUSIONS OF LAW

This purpose of the hearing was to determine if this Board has jurisdiction over the abolishment of Appellant Hopkins' position as Chief Investigator. Appellee had the burden of proving that Appellant Hopkins was an unclassified employee at the time of his job abolishment, thereby divesting this Board of jurisdiction to review his job abolishment. Appellee has met its burden.

While Appellee has met its burden in proving by a preponderance of the evidence that Appellant Hopkins was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code, this Board is also without jurisdiction to review the appeal of Appellant Hopkins as the evidence has established that Appellant Hopkins was a contract employee and not a classified employee. Appellant's Exhibit A was admitted into evidence and is titled "EMPLOYMENT CONTRACT". The contract is between Appellee and Appellant Hopkins. In reading the terms and conditions of the contract, it is clear that Appellant Hopkins was under a purchased personal services contract with the Appellee and was not a classified employee.

The contract states that Appellant Hopkins' employment is "upon the terms and conditions of this Agreement" and is for "a set term with an annual negotiation of compensation, benefits and perquisites". There is a paragraph in the contract which states that the parties shall negotiate Appellant Hopkins' salary not less than annually. Therefore, Appellant Hopkins was not subject to any salary schedule, nor was his compensation set by his employer. Instead it was negotiated by the parties every year. Appellant Hopkins' duties were set out in a position description attached to the contract instead of being subject to a classification plan. The contract provides that his duties may be "extended or curtailed" depending on the demands of the Appellee. Appellant Hopkins' benefits, such as vacation, sick and personal leave, holidays and fringe benefits, are all determined by the contract. Even though most of those benefits mirror what is given to classified employees pursuant to statute, Appellant Hopkins' benefits were not determined by statute but were determined by his employment contract. The termination notice in the contract provides that Appellant Hopkins could be terminated

"upon written notice by the Employer in the event of any acts by the Employee constituting substantial malfeasance, misfeasance, and/or

nonfeasance or **constituting a substantial breach of any his duties under this Contract.**" (Emphasis added),

The threshold for the termination of Appellant Hopkins' service isn't that of a classified employee, which is found in section 124.34 of the Ohio Revised Code. Instead, his threshold is defined by the contract and includes a breach of contract. The Agreement also contains a paragraph which states that "This Agreement contains the entire understanding of the parties...". It also states that Appellant Hopkins acknowledges that "his services are unique and personal", thereby taking himself out of the realm of the classified employee whose duties are part of a classification plan.

The original contract was signed by then Coroner Evans and Appellant Hopkins and has been continuing in nature by signed Addenda, between Coroner Chartrand and Appellant Hopkins. The contract is not between a labor union and Appellee, as the evidence established that Appellant Hopkins is not represented by a labor union and there is no negotiated contract between the Appellee and a labor union. The contract is simply a contract between two parties for the "unique and personal" services of Appellant Hopkins. Although the Employment Contract purports to have Appellant Hopkins covered by certain statutes of the Ohio Revised Code, such as section 124.38, the contract cannot, in and of itself, give classified status to Appellant Hopkins where none exists. Appellant Hopkins was either a classified employee covered by all of the laws pertaining to classified employees, such as being under a county classification and compensation plan, subject to all of the provisions regarding benefits and subject to section 124.34 of the Ohio Revised Code, or he was under a purchased personal services contract. He can't take bits and pieces of the Ohio Revised Code and decide which pieces are most advantageous to him and ignore the rest through a contract. The Employment Contract does not even address the subject of a job abolishment or layoff, only that of "malfeasance, misfeasance, nonfeasance or a substantial breach of any of his duties under this Contract." Clearly, Appellant Hopkins was not a classified employee.

Appellant Hopkins appears to have received salary increase each year under the Employment Contract and not pursuant to any salary schedule applicable to county employees. His salary was negotiated under the provisions of the contract, not under the provisions of the Ohio Revised Code applicable to classified employees.

The purchased personal services contract, or Employment Contract, that governed the employment of Appellant Hopkins does not confer unclassified status upon Appellant Hopkins. Indeed the designation of an unclassified employee is one set by statute for those employees who are in civil service to the state and whose terms and conditions of employment are set by statute, not by a purchased personal service contract. A civil service employee is either classified, which means he or she is protected by all of the civil service statutes, or is unclassified pursuant to the duties performed or pursuant to a specific statutory designation. The unclassified employee's tenure is subject only to the pleasure of the appointing authority and is not subject to limitations of malfeasance, misfeasance, nonfeasance or breach of duty. Appellant Hopkins was neither classified nor unclassified as he was an independent contractor working pursuant to the terms and conditions of a negotiated purchased personal services contract. His duties were subject only to that contract, as were his salary, benefits and his termination. Therefore, this Board does not possess subject matter jurisdiction over Appellant Hopkins' appeal as he was not a civil servant but was instead an independent contractor working under a purchased personal services contract.

In the event that this Board does not agree with the above legal conclusions and determines that Appellant Hopkins was a civil servant, this Board would still be divested of jurisdiction over his appeal, as his duties place him into the unclassified service pursuant to section 124.11(A)(9) of the Ohio Revised Code. That statute states as follows:

(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:

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and **those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials** or county administrator, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination, provided that division (A)(9) of this section shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in division (A)(9) of this section

applies to any position in a county department of job and family services created pursuant to Chapter 329. of the Revised Code. (Emphasis added).

As can be seen from reading the above statute, any county employee who reports to and is directly responsible to an elected county official and who holds a fiduciary or administrative relationship to that official, is in the unclassified service. The evidence clearly established that Appellant Hopkins reported directly to Coroner Chartrand, who is an elected county official. The evidence also established that pursuant to the duties assigned to Appellant Hopkins, he was employed both in a fiduciary and administrative capacity.

The definitions of administrative and fiduciary relationship is found in this Board's administrative rule 124-1-02(C) and (I) and of the Ohio Administrative Code. It states as follows:

C) "Administrative relationship" generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment and leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one position occupies an administrative relationship to another is a question of fact to be determined by the board.

(I) "Fiduciary relationship" generally means a relationship where the appointing authority reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.

The evidence established that Appellant Hopkins had substantial authority to initiate discretionary action with regard to managing the daily office functions, the budget of the office and maintenance of the accounts. He was also in a fiduciary relationship with Dr. Chartrand as Dr. Chartrand placed a great deal of trust and confidence in him to carry out his duties on his behalf.

One of the criteria in determining if an employee occupies a fiduciary relationship to the appointing authority is if the duties performed could be "delegated to the average employee with knowledge of the proper procedures." If it is to be assumed *arguendo* at this point that Appellant Hopkins was not on a purchased personal services contract which excluded him from the civil service, then the Employment Contract defines his duties. In paragraph 15. "Assignment", it specifically states:

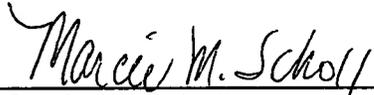
The Employee acknowledges that his services are **unique and personal**. Accordingly, the Employee may not assign his rights or delegate his duties or obligations under this Contract. (Emphasis added).

The above language states that Appellant Hopkins' provided services to the Appellee which were unique and personal and could not be assigned to another employee. By virtue of that language, Appellant Hopkins should be estopped from arguing that he was in the classified service, as his services were personal to the appointing authority, thereby making the performance of his duties by "an average employee with knowledge of the proper procedures" impossible. Appellant Hopkins' duties and authority to sign Dr. Chartrand's name on payroll, status change forms, budget documents, and to certify funds on behalf of Dr. Chartrand, all establish that he had a fiduciary relationship with Dr. Chartrand. Dr. Chartrand could not answer questions with regard to the Auditor's Certification of Funds document, as he had never seen the document before since Appellant Hopkins signed his name on behalf of the office and independently took care of completing such documents. His discretionary actions with regard to those documents, as well as with the maintenance of the accounts, the ability to move money between accounts, the independence in setting his own schedule and running the day to day operations of the office, also establish that he held an administrative relationship to Dr. Chartrand.

Appellant Hopkins dealt directly with the Board of Commissioners by calling them and scheduling budget meetings and then presenting the budget directly to the Commissioners. He independently signed off on purchases for the office in amounts in excess of \$50,000. He had access to all mail, even that marked as "confidential". Dr. Chartrand testified he trusted Appellant Hopkins to complete his investigations with autonomy, trusted him to run the office on a daily basis and to have his signature authority. Although Appellant Hopkins testified that he did not make a move without first gaining the approval of the Dr. Chartrand, the evidence

established otherwise. Dr. Chartrand could not answer many questions with regard to the day to day overseeing of the office and the many documents entered into evidence bear the signature of Appellant Hopkins or that of Dr. Chartrand's with Appellant Hopkins' initials. Clearly Appellant Hopkins was given the authority and had the trust placed in him to handle and monitor funds, to sign documents binding the office and to carry out the duties of the office. He occupied both a fiduciary and administrative relationship to Dr. Chartrand thereby making him an unclassified employee.

Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of jurisdiction by this Board to consider Appellant Hopkins' appeal on the basis that he was employed pursuant to a purchased personal services contract which took him out of the realm of a civil service employee, or in the alternative, that he was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code over which this Board does not possess jurisdiction.



Marcie M. Scholl
Administrative Law Judge

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