

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Dianne Eutsler,

Appellant.

v.

Case No. 07-REM-02-0073

Gallia County Recorder,

Appellee.

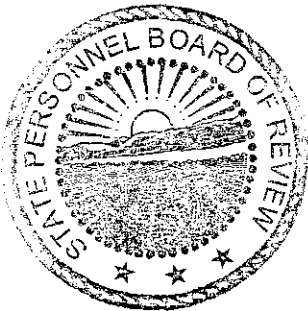
ORDER

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. §§ 124.11(A)(8) and 124.11(A)(28).

Lumpe - Aye
Booth - Aye
Sfalcin - Aye

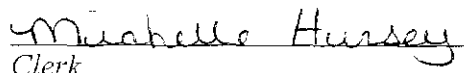



J. Richard Lumpe, *Chairman*

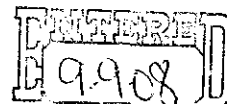
CERTIFICATION

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. September 9, 2008.


Michelle Hursey
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**

Dianne Eutsler,

Case No. 07-REM-02-0073

Appellant

v.

July 28, 2008

Gallia County Recorder,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration pursuant to Appellant's appeal of her termination from employment. Appellant was terminated as an unclassified employee, without an R.C. 124.34 Order of Removal. A record hearing in the instant matter was held on January 14, 2008. Appellant was present at the record hearing and was represented by Ms. Lynn Sweeney. Appellee was present at record hearing through its designee, Gallia County Recorder Roger Walker, and was represented by Eric R. Mulford, Assistant Prosecuting Attorney.

This Board does not possess subject matter jurisdiction over the removal of an unclassified employee, since Ohio Revised Code Section 124.03 limits this Board's jurisdiction to actions concerning classified employees. Therefore, in order to determine if this Board does possess jurisdiction over the instant appeal, the issue considered at record hearing was whether Appellant's position was classified or unclassified at the time of her removal. Should this Board determine that Appellant's position was unclassified, then the appeal would be dismissed for lack of subject matter jurisdiction. Should, however, the Board determine that Appellant's position was in the classified service, then her removal must be disaffirmed for failure to comply with the requirements of R.C. 124.34.

STATEMENT OF THE CASE

Roger Walker testified that he has served as the Gallia County Recorder since 2005. He stated that the duties of the Recorder's Office are to keep public records related to real estate transactions, mortgages, deeds, property liens, leases,

military discharge, etc. The witness noted that the majority of the public records maintained by the Recorder's office are related in some way to real property or land. Mr. Walker noted that the Recorder's Office is the ultimate impartial keeper of official records. He observed that it is vitally important that the documents maintained by his office be legible and filed correctly, both with regard to date filed and location filed.

The witness recalled that when he took office on or about January 3, 2005, he told the staff that he did not intend to make any big changes; three Deputy Recorders and himself were employed by the Recorder's Office at that time. Mr. Walker indicated that he believed that all three Deputy Recorder positions were in the unclassified civil service and stated that he filed the necessary paperwork with the Department of Administrative Services (DAS) to designate them as unclassified (Appellee's Exhibit 1). He testified that he believed he properly followed the DAS guidelines for designating the Deputy Recorders' positions to be unclassified. The witness confirmed that the notice he sent to DAS (Appellee's Exhibit 1) did not list either the employees' names or their Position Control Numbers (PCN).

Mr. Walker noted that all of the Deputy Recorders are supervised by and report directly to him. He observed that the Deputy Recorders work under his authority to take in documents to be filed and filing fees. The witness explained that when Deputy Recorders accept a document for filing, they must first determine whether or not the document is one that is appropriate to be filed with the Recorder's Office, then they file or scan the document and return the original to the individual who submitted it. Mr. Walker noted that Deputy Recorders also perform title searches, issue receipts for filing fees (Appellee's Exhibit 5) and refund checks for overpayments, and assist customers in locating documents within the office.

The witness stated that Deputy Recorders are responsible for handling money that comes into the office either by mail or from walk-in customers. He indicated that all of the Deputy Recorders had the authority to issue a receipt for payment of fees, or to issue a refund check in the event of an overpayment. Mr. Walker testified that all of the Deputy Recorders had the authority to make deposits to and withdrawals from the Recorders bank account (Appellee's Exhibit 7 and 8). Mr. Walker noted that all of the Deputy Recorders are authorized to use the office petty cash account (Appellee's Exhibit 9).

Mr. Walker observed that because he is often not present in the office during normal working hours, the Deputy Recorders have to deal with most situations on their own, although he acknowledged that they can request assistance from the County Prosecutor's Office on legal matters. He agreed that most of Appellant's job training was provided by the other two Deputy Recorders. The witness noted that he was learning the responsibilities of his job as Recorder at the same time Appellant was learning her own job duties, and stated that he answered her questions directly whenever possible, but sometimes had her ask another Deputy Recorder.

Mr. Walker indicated that one of his three deputies left the Recorder's Office and Appellant was hired to fill the vacancy in February 2005. He explained that she went through a brief training period and was then sworn in as a Deputy Recorder in March 2005 (Appellee's Exhibit 2). The witness testified that Appellant did not serve a formal probationary period and stated that he did not know if a probationary period was required for her position. He confirmed that he instructed her verbally as to the extent of her job responsibilities, but acknowledged that she was never provided with a written copy of her job duties. Mr. Walker stated that Appellant performed all of the duties of a Deputy Recorder and had the authority to sign on his behalf.

The witness testified that he recalled Appellant being sworn into her position by Judge Evans, and confirmed that Appellant was provided with an acknowledgment form stating that her position was unclassified (Appellee's Exhibit 3) at that time, but could not recall whether he personally gave the document to Appellant. He stated that he believed that the meaning of the documents was explained to Appellant at that time.

Appellant confirmed that she signed the document given to her by Judge Evans when she was sworn in (Appellee's Exhibit 3) that indicated her position was unclassified. She stated that neither Judge Evans nor Mr. Walker explained the meaning of the document or its terms; Appellant recalled that when she attempted to ask a question about the document, both Judge Evans and another Deputy Recorder in attendance advised her to just sign the document. She noted that upon the advice of another employee she made a copy of the document when she was sworn in and observed that the document was not in her personnel file at the time of her termination.

Appellant testified that she was told at the time she was hired that her position had a one-year probationary period and that she could be dismissed without cause during that time period. She acknowledged that she had no documentation to show that she was required to serve a probationary period. Appellant stated that she had no discipline, no evaluations and no progress reports during that one-year period. She recalled that when she attended a meeting with the County Commissioners regarding her termination, the County's labor counsel stated at that time that unclassified employees did not serve a probationary period.

Appellant confirmed that her position title was Deputy Recorder and agreed that Mr. Walker's characterization of her day to day job duties was accurate. She noted that when she recorded documents and issued receipts she signed or stamped Mr. Walker's name and added her own initials below the signature. Appellant indicated that she never received any written documentation or other instruction regarding her job duties from Mr. Walker, and learned how to do her job from the other employees.

Appellant confirmed that she received a copy of the Gallia County Employee Handbook (Appellant's Exhibit A) at the time she was hired. She stated that after she was terminated she contacted DAS to see if her name had been submitted as an unclassified employee and was told that it had not.

FINDINGS OF FACT

Based upon the information contained in the record, the testimony presented and the evidence admitted at record hearing, I make the following findings of fact:

Appellant was removed from employment with Appellee on or about February 23, 2007, as an unclassified employee. No R.C. 124.34 Order of Removal was provided to Appellant.

Roger Walker took office as the Gallia County Recorder on or about January 3, 2005. At the time Mr. Walker took office, the Recorder's Office employed three Deputy Recorders. Mr. Walker filed a letter with DAS attempting to designate the three Deputy Recorder positions as exempted from the classified civil service.

In early 2005, one of the incumbent Deputy Recorders left the office and Appellant was hired to fill the vacant position. Appellant began working in the Recorder's Office in February 2005. After a brief training period, Appellant was sworn in to her position as Deputy Recorder on March 7, 2005. At the time she took her oath of office, she was provided with and signed a copy of her oath and a form wherein she acknowledged that the position of Deputy Recorder was unclassified and that she served at the pleasure of the appointing authority and had no protection under the civil service laws.

Appellant was responsible for recording documents, accepting payments for filing fees, issuing receipts or refund checks as appropriate, preparing bank deposits, conducting title searches, assisting customers in locating documents and performing general office duties. When Appellant recorded documents and issued receipts she signed or stamped Mr. Walker's name and added her own initials below the signature. Appellant, along with the other Deputy Recorders, was authorized to sign checks written from the Gallia County Recorder's account. Although Mr. Walker was Appellant's direct supervisor, she was instructed in the actual performance of her job duties by the other Deputy Recorders. Appellant was never provided with written documentation outlining her job responsibilities.

Appellant received a copy of the Gallia County Employee Handbook (Appellant's Exhibit A) at the time she was hired. Upon her termination, Appellant contacted DAS to see if her name had ever been submitted as an unclassified employee and was told that it had not.

CONCLUSIONS OF LAW

Civil service employment in the State of Ohio is divided into the classified and unclassified services; the division between these two types of public employment is outlined in R.C. 124.11(A), which describes a variety of positions in the public sector which are placed in the unclassified service. In this instance, Appellee asserts that Appellant's position was exempted from the unclassified service pursuant to R.C. 124.11(A)(8). At the time of Appellant's removal, that section of the Ohio Revised Code exempted from the classified service:

(8) ... three clerical and administrative support employees for other elective officers and each of the principal appointive executive

officers, boards, or commissions, except for civil service commissions, that are authorized to appoint such clerical and administrative support employees

Ohio Administrative Code Section 123:1-5-01(A) provides that an elective officer is required to notify the Director of DAS of the position(s) he/she is claiming as exempted under R.C. 124.11(A)(8) within sixty days after taking office. Appellee provided this Board with an incomplete document to support its assertion that Gallia County Recorder Roger Walker properly exempted Appellant's position pursuant to R.C. 124.11(A)(8). Specifically, the document provided was deficient in that it was undated, referenced only one position having the classification title of Deputy Recorder, and did not specifically identify by reference to a Position Control Number or the incumbent's name which of the three Deputy Recorder positions in the Gallia County Recorder's Office was to be exempted. In addition, the applicable Ohio Revised Code section justifying the exemption was identified only as "124.11A." Further, no evidence was presented to establish that the notification allegedly submitted to DAS included the applicable supporting documents. Appellant produced a copy of an email communication from DAS which was obtained after her termination, indicating that DAS did not have any records under either her name or her social security number pertaining to the Gallia County Recorder's Office. Accordingly, I find that Appellee failed to demonstrate by a preponderance of the evidence that it properly designated Appellant's position as exempted from the classified service pursuant to R.C. 124.11(A)(8).

Appellee argues in the alternative that even if Appellant was not exempted from the classified service by operation of R.C. 124.11(A)(8), then her job duties were sufficient to place her in the unclassified service. Two subsections of the R.C. 124.11(A) are potentially applicable to Appellant, R.C. 124.11(A)(9) and R.C. 124.11(A)(28). R.C. 124.11(A)(9) exempts:

(9) ... 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 ...

R.C. 124.11(A)(28) exempts:

(28) ... 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 their principals;

Both (A)(9) and (A)(28) reference a “fiduciary” relationship; an “administrative” relationship is also referenced by (A)(9). Neither term is defined by the Revised Code, but they are defined within the Administrative Code. O.A.C. 124-1-02 defines a “fiduciary relationship” in subsection (I) as:

... 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.

An “administrative relationship is defined in subsection (C) as:

... 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.

An examination of the testimony and evidence contained in the record does not indicate that Appellee placed any special confidence or trust in Appellant’s integrity and fidelity that would exceed a general expectation that she was competent to perform her job duties. Similarly, Appellee did not demonstrate either that Appellant had substantial discretionary authority or that it relied on her personal judgment and leadership abilities more than it would have relied on that of an average employee. Although Appellee produced evidence to establish that Appellant, along with the other two Deputy Recorders and Mr. Walker, had the

authority to sign refund checks, accept payments, and access a \$75.00 petty cash fund used only to make change for Recorder's Office customers, the mere handling of public money is not evidence of a fiduciary relationship. Neither is the determination as to whether a document is appropriate to be filed with the Recorder's Office evidence of reliance on personal judgment that is sufficient to support the finding of an administrative relationship. Therefore, I find that the job duties performed by Appellant do not create either a fiduciary relationship or an administrative relationship to the Gallia County Recorder.

Finally, this Board must consider whether Appellant acted for and in the place of Mr. Walker, as referenced by R.C. 124.11(A)(28). As previously noted, Appellant was responsible for recording documents, accepting payments for filing fees, issuing receipts or refund checks as appropriate, preparing bank deposits, conducting title searches, assisting customers in locating documents and performing general office duties. When Appellant recorded documents and issued receipts she signed or stamped Mr. Walker's name and added her own initials below the signature. Appellant was authorized to sign her own name to refund checks drawn on the Gallia County Recorder's bank account. I find that these duties constituted acting for and in the place of Mr. Walker.

In summary, Appellee has failed to demonstrate that it properly exempted Appellant's position from the unclassified service pursuant to R.C. 124.11(A)(8). Appellee did, however, support its assertion that Appellant's job duties were sufficient to place her in the unclassified service, pursuant to R.C. 124.11(A)(28).

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED**, as this Board does not possess subject matter jurisdiction over the removal of an unclassified employee


Jeannette E. Gunn
Administrative Law Judge