

CSC Update

State Personnel Board of Review

Volume 2, January 2001

In This Issue

CSC Statewide Conference Scheduled for March 2001.

Guidelines for Conducting Employee Hearings Mailed.

Political Activity of Civil Service Employees: What is Permissible?

Civil Service Testing: Questions and Guidelines.

Staying Up to Date on Civil Service Law.

Recent Changes in R.C. Chapter 124.

CSC Statewide Conference Scheduled for March 2001

SPBR will host its first statewide CSC conference on March 14, 2001. The one-day conference for municipal civil service commission members and city law directors will take place from 9:30 a.m. to 2:30 p.m. at the Vern Riffe Center in downtown Columbus. Seminar flyers with registration information were mailed to civil service commissions throughout the State of Ohio in December 2000.

Topics of discussion include Understanding and Applying Civil Service Law, Police and Fire Fighter Issues and Conducting Employee Hearings/ Building a Hearing Record.

Registration for this conference must be received by SPBR no later than February 16, 2001. If you have any questions regarding the seminar, please contact Elaine Stevenson, CSC Coordinator, at 614-466-7046.



Guidelines for Conducting Employee Hearings Mailed

The State Personnel Board of Review is pleased to announce that its resource manual, "Guidelines for Conducting Employee Hearings," was mailed in November 2000 to approximately 180 civil service commission members and city law directors who requested a free copy from SPBR.

The manual covers the hearing process from the initial receipt of an employee's appeal through possible appeal of the CSC's decision to a reviewing court. It includes sections dealing with jurisdiction, practices and procedures, disciplinary and non-disciplinary hearings, and judicial review under Ohio Revised Code Chapter 2506., as well as quick reference lists, selected sections of the Revised Code and Ohio Administrative Code, and a reference copy of a Revised Code Section 124.34 Order.

SPBR believes that these guidelines will assist municipal civil service commissioners in conducting hearings and applying Ohio civil service law to specific employee situations.

If you did not receive a copy of this resource manual, or would like to request additional copies for use by your civil service commission, please contact Elaine Stevenson, CSC Coordinator, at 614-466-7046 to request a free copy.



Political Activity of Civil Service Employees: What is Permissible?

Can an individual run for public office while employed as a member of the civil service of the State of Ohio? Is it permissible for employees to distribute campaign literature in the workplace? What about making financial contributions to political candidates or organizations? Does it make a difference whether the employee is classified or unclassified?

Ohio Revised Code Section 124.57(A) prohibits an employee in the classified civil service from engaging in partisan political activity, such as soliciting contributions for any political party or for any candidate for public office, or serving as an officer in any political organization. Partisan political activity is defined as activity relating to a specific party, faction, cause, or person. The purpose of R.C. 124.57(A) is to ensure the integrity and efficiency of the public service by preventing classified employees from becoming obligated to political parties or civic officers for civil service positions, and by preventing classified employees from currying favor with political parties or elected officials through political activity. (See *Heidtman v. City of Shaker Heights*, 163 Ohio St. 109 (1955); See, also, 2000 Op. Att’y Gen. No. 2000-033.)

Courts have recognized the legitimate governmental interest of maintaining the integrity and efficiency of the public service, as well as the private interest each citizen has in exercising his or her free speech rights under the federal and state constitutions. In *Heidtman*, the Supreme Court of Ohio considered the purpose and the language of R.C. 124.57. Concluding that the statute addressed a specific type of political activity, the Court interpreted the word “politics” narrowly, finding that R.C. 124.57 prohibits only partisan political activity, rather than all political activity.

In *Gray v. Toledo*, a lower court further stated that a broader definition of politics, for the purposes of R.C. 124.57, would unconstitutionally violate freedom of speech under both the federal and state constitutions. (See, *Gray v. Toledo* (N.D. Ohio 1971), 323 F.Supp. 1281.) Accordingly, R.C. 124.57 balances governmental interest with the interests of private citizens by prohibiting classified employees from engaging in partisan political activity, yet allowing these employees to participate in other political activity, such as voting and expressing political opinions.

Case law has established that if an employee in the classified service has engaged in partisan political activity, an employer may remove or otherwise discipline the employee pursuant to R.C. 124.57 and R.C. 124.34. (See, *Resek v. Seven Hills* (1983), 9 Ohio App.3d 224; *Jackson v. Coffey* (1977), 52 Ohio St.2d 43.) Further, the Ohio Attorney General has advised that an appointing authority’s power to discipline a classified employee who has engaged in conduct prohibited by R.C. 124.57 is discretionary, not mandatory. (See 1983 Op. Att’y Gen. No. 83-095.)

Ohio Administrative Code Section 123:1-46-02 provides that employees in the unclassified civil service are generally not prohibited from engaging in political activity unless specifically precluded by federal or state constitutional or statutory provisions. However, because unclassified employees serve at the pleasure of an appointing authority, an appointing authority may restrict the political activity of unclassified employees. The Supreme Court of Ohio found in *Painter v. Graley* (1994), 70 Ohio St.3d 377, that the discharge of an unclassified employee based upon her candidacy for city council did not violate the employee’s state constitutional rights, and that the equal protection and free speech provisions of the Ohio Constitution do not guarantee an unclassified employee the right to seek partisan elected office while holding public employment. Any restrictions placed upon unclassified employees may not violate state or federal law.

O.A.C. 123:1-46-02 sets forth a non-exhaustive list of permissible and prohibited political activities for employees in the classified civil service. If you have any questions regarding political activities of employees in the classified or unclassified civil service, please contact SPBR at 614-466-7046.



The CSC Update is provided by the State Personnel Board of Review to raise awareness regarding issues related to Ohio civil service law. The contents of this newsletter should not be considered legal advice. Readers are encouraged to contact SPBR at 614/466-7046 for specific questions.

(continued on page 5)

Civil Service Testing: Questions and Answers

Thad Adamaszek, Department of Administrative Services, Human Resources Division, Office of Employment Processing

The Ohio civil service process is based on Article XV Miscellaneous (XV-10 Civil Service), adopted January 1, 1913, as part of the Constitution of the State of Ohio; Ohio Revised Code Chapter 124; Ohio Administrative Code Chapter 123; Opinions of the Ohio Attorney General; and court decisions. Competitive examinations for civil service positions have been used in Ohio since 1913. In my personal files, I have a copy of a State Civil Service Commission of Ohio competitive examination bulletin dated May 1919, announcing a series of examinations for twenty-three different job titles.

What I would like to do in this article is review a few of the questions and concerns identified as important issues by municipal civil service commissions in their responses to a recent State Personnel Board of Review survey.

Number of Names to be Certified

Through 1995, the state law called for appointments to be made from lists of eligible candidates based on the “rule of three.” In other words, an appointing authority was required to select one of the three candidates standing highest on the eligible list for the class or grade to which the position to be filled belonged. In October 1995, the selection process for entry-level appointments from eligible lists was changed to a “rule of ten.”

This change has caused some difficulty for many small municipalities and counties because a complete list of ten names or more is difficult to come by, especially if the applicant population is low. Local civil service commissions find that a list with nine names is considered a

“broken list” and that the appointing authority is under no obligation to make certified appointments from such a list. In such instances, and during current low unemployment times, there is a benefit to the appointing authority to make certified appointments from a “broken list.” The appointing authority can be assured that the applicants have passed an examination and meet all the basic requirements of the job in question.

Promotional examination eligible lists were not affected by the 1995 law change; they are still based on the “rule of three.” Police promotional examinations, are still based on the “rule of one.”

References: R.C. 124.27, R.C. 124.31, R.C. 124.44



Extra Credit for Veterans Preference

Veterans preference is added only to open competitive examinations. It is never added to promotional examinations. Veterans preference is a 20% bonus. The veterans preference bonus can only be added to a passing score and cannot be used to help

an individual pass the exam.

Formula:

$$(.2 \times \text{passing score}) + \text{passing score}$$

Example:

$$(.2 \times 80) + 80 = 16 + 80 = 96$$

In order to be eligible for the preference bonus, state criteria require that an individual be honorably discharged or separated under honorable conditions from the regular U.S. Armed Forces, be a current resident of the State of Ohio, and be able to produce a DD 214 clearly showing that the individual has been honorably discharged or separated under honorable conditions.

Members of the U.S. Reserve Armed Forces can receive the veterans preference if they can produce a DD 214 clearly showing their honorable discharge or separation under honorable circumstances, and they are currently Ohio residents.

Veterans preference is not awarded to men or women who have completed their National Guard service. National Guard men and women who have been federalized (i.e., called to active duty, as in the Gulf War), who can produce the necessary documentation (e.g., orders, separation certification, DD 214) and are currently residents of the State of Ohio are eligible for veterans preference.

An applicant who has an honorable discharge and is not a current resident of the State of Ohio is not eligible for veterans preference. A current member of the U.S. Armed Forces, who has not had a previous honorable discharge, is not eligible for veterans preference. Proof of veterans preference must be submitted prior to sitting for an open competitive civil service examination.

Extra Credit for Seniority

Seniority credit can only be applied to passing scores on promotional examinations and cannot be used to raise a failing score to a passing score.

Seniority credit is based on the total grade attainable in the promotional examination. The total grade attainable is always 100%.

Applicants with less than four years of work experience get no seniority credit added to their total score. An applicant with eight years of experience will receive 3.4 seniority credits added to their total score.

Here is an important note regarding seniority on promotional examinations. In 1992, the State Supreme Court ruled in *State, ex rel. McArthur v. DeSouza* (1992), 65 Ohio St.3d 25, 599 N.E.2d 268, that the rules of a city civil service commission limiting promotion credit for seniority to service with the city was in conflict with R.C. 124.31, which grants promotion service credit for “years of service” with other Ohio political subdivisions.

The court’s decision in *McArthur* affected the manner in which DAS handles seniority when it administers promotional examinations. Applicants must provide proof of employment from Ohio jurisdictions, other than the State, on letterhead from the jurisdiction prior to sitting for the examination.

The proof can come from the State of Ohio; any Ohio county, municipality, township or board of education; and any Ohio public university or college. So, a Sheriff’s Sergeant sitting for a Sheriff’s Lieutenant promotional examination who has had two years of experience as a Sergeant, three years of experience as a Patrol Officer in the Sheriff’s Department,

first four years	1% x 100	1.0
year five	.6% x 100	.6
year six	.6% x 100	.6
year seven	.6% x 100	.6
year eight	.6% x 100	.6
year nine	.6% x 100	.6
year ten	.6% x 100	.6
year eleven	.6% x 100	.6
year twelve	.6% x 100	.6
year thirteen	.6% x 100	.6
year fourteen	.6% x 100	.6
	Maximum Seniority Credit	7.0

and provided proof of employment from Smalltown, Ohio, with two years of experience as an animal control warden, and two years of experience from Remote County Community College of Ohio as a laboratory assistant, has a grand total of nine years of experience. This will produce four seniority credits to be added to the Sergeant’s total passing examination score.

The *McArthur* decision should affect all promotional examinations, including police promotional examinations. However, local jurisdictions holding promotional examinations for firefighting positions should check this ruling with their city attorneys, since paragraph five of

R.C. 124.45, Promotion of Firemen, limits seniority to the municipal or civil service township fire department.

References: R.C. 124.31 - 124.45

I hope that this information will be helpful to municipal civil service commissions, human resources personnel and appointing authorities. Please feel free to contact me at (614) 466-0510 to discuss issues that you have regarding recruitment, testing and/or certification. I can share a practitioner’s viewpoint regarding both state and federal regulations.

Permissible and Prohibited Political Activity for Classified Civil Service Employees

Permissible Activities:

1. Registration and voting.
2. Expression of opinions, either oral or written.
3. Voluntary financial contributions to political candidates or organizations.
4. Circulation of nonpartisan petitions or petitions stating views on legislation.
5. Attendance at political rallies.
6. Signing nominating petitions in support of individuals.
7. Display of political materials in the employee's home or on the employee's property.
8. Wearing political badges or buttons, or the display of political stickers on private vehicles.
9. Serving as a precinct election official under R.C. 3501.22.

Prohibited Activities:

1. Candidacy for public office in a partisan election.
2. Candidacy for public office in a nonpartisan general election if the nomination to candidacy was obtained in a partisan primary or through the circulation of nominating petitions identified with a political party.
3. Filing of petitions meeting statutory requirements for partisan candidacy to elective office.
4. Circulation of official nominating petitions for any candidate participating in a partisan election.
5. Service in an elective or appointed office in any partisan political organization.
6. Acceptance of a party-sponsored appointment to any office normally filled by partisan election.
7. Campaigning by writing for publications, distributing political material, or by writing or making speeches on behalf of a candidate for partisan elective office, when such activities are directed toward party success.
8. Solicitation, either directly or indirectly, of any assessment, contribution or subscription, either monetary or in-kind, for any political party or political candidate.
9. Solicitation of the sale, or actual sale, of political party tickets.
10. Partisan activities at the election polls, such as solicitation of votes for other than nonpartisan candidates and nonpartisan issues.
11. Service as, witness or challenger, for any party or partisan committee.
12. Participation in political caucuses of a partisan nature.
13. Participation in a political action committee which supports partisan activity.

Staying Up to Date on Civil Service Law

Frequent legislative changes and court decisions can make it difficult for civil service commissions to stay up to date with the provisions and applications of Ohio's civil service laws, found in Revised Code Chapter 124.

On-line copies of the Revised Code and the Ohio Administrative Code are frequently updated to reflect legislative changes, and are available at <http://www.state.oh.us/ohio/ohiolaws.htm>. The on-line Codes may be searched by word(s) or phrase, or users may browse the Table of Contents.

Call your local library to find out if copies of the Revised Code and Administrative Code are available, or you may purchase copies from West Group, 1-800-328-4880, or Anderson Publishing, 1-800-582-7295.

To stay current on court decisions, you may wish to visit the Ohio Supreme Court website at <http://www.sconet.state.oh.us/rod/Opinions/List.asp>. A search of "Headnotes" for the words "Public Employment" will generate a list of cases dealing with civil service law.

***CSC Update is published
twice yearly by the
State Personnel Board of Review
65 East State Street, 12th Floor
Columbus, OH 43215
(614) 466-7046 - voice
(614) 466-6539 - fax
<http://www.state.oh.us/pbr/>***

***Please send us your
comments, questions and
suggestions regarding
CSC Update.***

In the Next Issue

SPBR Investigations of Civil Service Commissions Under R.C. 124.40.

Collective Bargaining Agreements' Effect on Civil Service Law.

Municipal Authority: Civil Service Commissions v. City Administration

Recent Changes in R.C. Chapter 124.

In mid-1999, changes were made to Ohio's civil service laws that affected an employee's statutory time limit in which to file an appeal of disciplinary action, and a probationary employee's right of appeal. These changes are detailed below, for your convenience. The applicability of these code sections to particular situations assumes a) that your municipality has a statutory system in place; and 2) that no collective bargaining agreement covers the situation.

R.C. 124.34. Time Limit for Filing Appeal from a Disciplinary Action.

Effective March 1, 1999, written appeals from R.C. 124.34 orders must be filed within ten calendar days following the date the order is served on the employee. (The prior statute calculated appeal time from the date the order was filed.)

R.C. 124.27. Reduction or Removal of Probationary Employees.

Effective March 30, 1999, if the service of a probationary employee is unsatisfactory, the employee may be reduced or removed at any time during the probationary period. An employee reduced or removed under this provision does not have a right to appeal the action to the quasi-judicial body otherwise authorized to hear appeals of employees in the civil service. (The prior statute allowed employees removed during the first half of their probationary period to appeal their reduction or removal.)

State Personnel Board of Review
65 East State Street
12th Floor
Columbus, OH 43215-4213