

November 5, 1996

OPINION NO. 96-057

Michael S. Lucas
State Librarian
The State Library of Ohio
65 South Front Street
Columbus, Ohio 43215-4163

Dear Mr. Lucas:

I have received your letter requesting an opinion on the question whether R.C. 124.136, which provides for parental leave privileges for certain public employees, applies to employees of Ohio's free public libraries. In using the term "free public libraries," you refer to libraries created pursuant to R.C. 3375.06 (county free public library); R.C. 3375.10 (township free public library); R.C. 3375.12 (municipal free public library); R.C. 3375.15 (school district free public library); R.C. 3375.22 (county district free public library); and R.C. 3375.30 (regional district free public library). *See, e.g.,* R.C. 3375.34.

In order to answer your question, it is necessary to examine the characteristics and legal status of free public libraries. Each free public library is governed by a board of trustees, which is a body politic and corporate, capable of suing, contracting, and holding and disposing of property. R.C. 3375.33. A free public library is an entity separate from a county, township, municipal corporation, or school district. *See, e.g., Miller v. Akron Public Library*, 60 Ohio L. Abs. 364, 96 N.E.2d 795 (C.P. Summit County 1951); 1992 Op. Att'y Gen. No. 92-028; 1985 Op. Att'y Gen. No. 85-075; 1961 Op. Att'y Gen. No. 2038, p. 94; *see also* R.C. 145.01(D) (for purposes of the Public Employees Retirement System, recognizing public libraries as employers separate from counties, townships, or municipal corporations).

Free public libraries are considered to be political subdivisions of the state for some purposes. *See, e.g., Mathis v. Cleveland Public Library*, 9 Ohio St. 3d 199, 459 N.E.2d 877 (1984) (public library is political subdivision for purposes of sovereign immunity); 1993 Op. Att'y Gen. No. 93-031 (public library is political subdivision for purposes of regional council of governments under R.C. Chapter 167 and self-funded health care benefit programs under R.C. 9.833). Employees of free public libraries are considered to be public employees for certain purposes. *See* R.C.

145.01(A)(1) *and* R.C. 3375.411 (Public Employees Retirement System); 1988 Op. Att'y Gen. No. 88-028 (deferred compensation programs under R.C. 145.71-.74).

Free public libraries are available for public use and are eligible to receive various public funds. *See, e.g.*, R.C. 3375.42-.43; R.C. 5705.23, .28, .32; R.C. 5747.03(A)(2), .46-.48; 1992 Op. Att'y Gen. No. 92-028; 1988 Op. Att'y Gen. No. 88-013. The board of trustees of a free public library is authorized to "[e]xpend for library purposes, and in the exercise of the power enumerated in this section, all moneys, whether derived from the county library and local government support fund or otherwise, credited to the free public library under its jurisdiction." R.C. 3375.40(B); *see also* R.C. 3375.35. The board has the power to "[a]ppoint and fix the compensation of all of the employees of the free public library under its jurisdiction." R.C. 3375.40(G). Thus, employees of a free public library are employed and paid by the library's board of trustees. *See* R.C. 3375.35-.36; *see also* 1985 Op. Att'y Gen. No. 85-075.

Let us look now to the statutory provisions governing parental leave privileges to determine whether they apply to employees of Ohio's free public libraries. As amended by Am. Sub. S.B. 99, 121st Gen. A. (1995) (eff. Oct. 25, 1995), R.C. 124.136 states, in part:

Each permanent full-time and permanent part-time employee paid in accordance with section 124.152 of the Revised Code and each employee listed in division (B)(2) or (4) of section 124.14 of the Revised Code who works thirty or more hours per week, and who meets the requirement of division (A)(2) of this section¹ is eligible, upon the birth or adoption of a child, for a parental leave of absence and parental leave benefits under this section.

R.C. 124.136(A)(1) (footnote added). Parental leave lasts for no more than six continuous weeks, and benefits equal to seventy percent of the base rate of pay are available during the final four weeks. R.C. 124.136(B).

In order to be eligible for parental leave privileges under R.C. 124.136, an employee must either be "paid in accordance with [R.C. 124.152]" or "listed in [R.C. 124.14(B)(2) or (4)]."² R.C.

¹ R.C. 124.136(A)(2) requires that, to be eligible for leave and benefits under R.C. 124.136, an employee "must be the biological parent of a newly born child or the legal guardian of and reside in the same household as a newly adopted child."

² Various other statutes also provide for benefits for employees who are paid in accordance with R.C. 124.152 or listed in R.C. 125.14(B)(2) or (4). *See* R.C. 124.134 (vacation leave); R.C. 124.135 (paid leave to serve on advisory boards or commissions or when soliciting for charities for which payroll deductions are made); R.C. 124.17 (Director of Administrative Services may establish program for recognition of exemplary performance); R.C. 124.384 (Director of Administrative Services may establish plan for early payment of accrued sick leave and vacation leave); R.C. 124.386 (personal leave); R.C. 124.81(A)(3) (insurance coverage).

124.136(A)(1). R.C. 124.152 sets forth salary schedules for exempt employees and defines "exempt employee" to mean an "employee paid directly by warrant of the auditor of state," whose position is included within the job classification plan established under R.C. 124.14 but who is not considered a public employee for purposes of collective bargaining under R.C. Chapter 4117. R.C. 124.152(D). "Exempt employee" also includes certain employees of the Secretary of State, Auditor of State, Treasurer of State, or Attorney General. *Id.* Employees of free public libraries do not come within this category. They are not employed by the specified state elected officials, and they are paid by their respective library boards of trustees, rather than being paid directly by warrant of the Auditor of State.³ Therefore, employees of free public libraries are eligible for parental leave privileges under R.C. 124.136 only if they are listed in R.C. 124.14(B)(2) or (4).

R.C. 124.14(B)(2) and (4), referenced in R.C. 124.136, read as follows:

(B) Division (A) of this section and sections 124.15 and 124.152 of the Revised Code do not apply to the following persons, positions, offices, and employments:

...

(2) Legislative employees, employees of the legislative service commission, employees in the office of the governor, employees who are in the unclassified civil service and exempt from collective bargaining coverage in the office of the secretary of state, auditor of state, treasurer of state, and attorney general, and employees of the supreme court;

...

(4) Any position for which the authority to determine compensation is given by law to another individual or entity....

Employees of free public libraries are not employed by the entities listed in R.C. 124.136(B)(2) and thus do not come within R.C. 124.136 through that reference. Your letter suggests, however, that employees of free public libraries might be included within the positions encompassed by R.C. 124.14(B)(4).

On its face, the language of R.C. 124.14(B)(4) is broad, encompassing "[a]ny position for which the authority to determine compensation is given by law to another individual or entity." To

³ Even if a free public library receives public funds and uses them to pay its employees, the employees are paid by the library, rather than by the state or another governmental entity. *See* 1961 Op. Att'y Gen. No. 2038, p. 94. *See generally Spitaleri v. Metro Regional Transit Authority*, 67 Ohio App. 2d 57, 426 N.E.2d 183 (Summit County 1980).

understand the meaning of this language, it is necessary to look at R.C. 124.14 as a whole. R.C. 124.14(A) requires the Director of Administrative Services to establish "a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state," and prescribe specifications for the various classifications. R.C. 124.14(A) also authorizes the Director of Administrative Services to adopt rules for establishing a classification plan for county agencies that do not use a county personnel department.

R.C. 124.14(B) states that division (A), and also R.C. 124.15 and 124.152,⁴ do not apply to persons, positions, offices, and employments listed in division (B). Thus, R.C. 124.14(B) lists persons, positions, offices, and employments that are excluded from job classifications created under R.C. 124.14(A), R.C. 124.15, and R.C. 124.152. The free public libraries are independent entities, and their employees are not subject to the civil service job classifications established pursuant to R.C. 124.14(A), R.C. 124.15, or R.C. 125.152. Therefore, their employees are not included in the language of R.C. 124.14(B)(4) that excludes certain positions from the operation of the job classifications.⁵

⁴ As discussed above, R.C. 124.152 sets forth salary schedules for employees who are paid by warrant of the Auditor of State but are exempt from collective bargaining. R.C. 124.15 sets forth salary schedules for employees who are subject to collective bargaining under R.C. Chapter 4117 and contains other provisions governing employment.

⁵ Your letter suggests that employees of free public libraries are included in the civil service because of the language of R.C. 124.11(A)(7)(b), which states that the unclassified service includes "[t]he library staff of any library in the state supported wholly or in part at public expense." While I am aware of authorities that support your suggestion, *see, e.g., Bick v. Youngstown State Univ.*, No. 78 CA 156 (Ct. App. Mahoning County Jan. 3, 1979), it is my judgment that the designation of positions within the unclassified service applies only to positions that are within the civil service, defined as follows: "The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service." R.C. 124.11. Thus, before a position can be in the classified or unclassified service, it must first be in the civil service of the state, a county, a city, a civil service township, a city health district, a general health district, or a city school district. *See, e.g.,* 1995 Op. Att'y Gen. No. 95-018; 1989 Op. Att'y Gen. No. 89-063. A free public library is an entity separate from all of these entities. Therefore, its employees are not in the civil service and, as a result, are in neither the classified nor the unclassified service. The language of R.C. 124.11(A)(7)(b) that includes library staff in the unclassified service applies only to individuals who are included in the civil service, and does not include employees of a free public library. *See, e.g.,* 1995 Op. Att'y Gen. No. 95-018, at 2-100 ("not all political subdivisions within the state are included in the civil service").

1991 Op. Att'y Gen. No. 91-061 and 1988 Op. Att'y Gen. No. 88-095 concluded that persons appointed under R.C. 3375.48 to serve as law librarians or assistant law librarians of county law libraries are included in the unclassified service pursuant to R.C. 124.11(A)(7)(b), without determining that the positions are included in the civil service of the state or a county, city, civil service township, city health district, general health district, or city school district. As noted in 1995

The conclusion that parental leave privileges granted pursuant to R.C. 124.136 do not extend to employees of free public libraries is supported by the language of the legislation enacting that provision, which indicates that the privileges were intended to apply to state employees who are exempt from collective bargaining. Am. S.B. 318, 120th Gen. A. (1994) (eff. June 20, 1994), stated as its purpose: "To enact [R.C. 124.136 and 124.137] to establish parental leave and benefits *for certain state employees exempt from the Public Employee Collective Bargaining Law.*" 1993-1994 Ohio Laws, Part II, 2625 (emphasis added). Uncodified section 2 of Am. S.B. 318 justifies the enactment of the bill as an emergency measure by "the fact that state employees covered by collective bargaining agreements already have been granted parental leave and benefits, and equity requires that this leave and these benefits be granted as soon as possible to state employees exempt from collective bargaining." 1993-1994 Ohio Laws, Part II, 2627-28. In enacting the parental leave provisions, therefore, the General Assembly intended to benefit exempt state employees.

The means for financing the parental leave benefits is also directed toward state employees. Am. S.B. 318 enacted R.C. 124.137, which created the parental leave benefit fund in the state treasury. R.C. 124.137 instructs the Director of Administrative Services to "use moneys credited to the fund solely for the payment of parental leave benefits available to employees paid by warrant of the auditor of state." R.C. 124.137. The fund is financed by money collected from "the payrolls of all state agencies with employees paid by warrant of the auditor of state." *Id.* Thus, the parental leave benefits granted by R.C. 124.136 are bestowed upon state employees and are paid for by the state agencies that employ them. The program was not intended to apply to employees of free public libraries and cannot reasonably be construed to apply to such employees.

For the reasons discussed above, it is my opinion, and you are advised, that R.C. 124.136, which provides for parental leave privileges for certain public employees, does not apply to

Op. Att'y Gen. No. 95-018, the statutory scheme governing county law libraries strongly suggests that county law library employees are in the service of the county for purposes of R.C. Chapter 124. *See* 1995 Op. Att'y Gen. No. 95-018, at 2-102 n.7. Employees of free public libraries, however, are not in the civil service of the state or the named entities and, therefore, are not in the unclassified service pursuant to R.C. 124.11(A)(7)(b). *See also* 1985 Op. Att'y Gen. No. 85-075.

Michael S. Lucas, State Librarian

-6-

employees of boards of library trustees established under R.C. 3375.06 (county free public library); R.C. 3375.10 (township free public library); R.C. 3375.12 (municipal free public library); R.C. 3375.15 (school district free public library); R.C. 3375.22 (county district free public library); or R.C. 3375.30 (regional district free public library).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

November 5, 1996

Michael S. Lucas
State Librarian
The State Library of Ohio
65 South Front Street
Columbus, Ohio 43215-4163

SYLLABUS:

96-057

R.C. 124.136, which provides for parental leave privileges for certain public employees, does not apply to employees of boards of library trustees established under R.C. 3375.06 (county free public library); R.C. 3375.10 (township free public library); R.C. 3375.12 (municipal free public library); R.C. 3375.15 (school district free public library); R.C. 3375.22 (county district free public library); or R.C. 3375.30 (regional district free public library).