

October 1, 2009

The Honorable Brent W. Yager
Marion County Prosecuting Attorney
134 East Center Street
Marion, Ohio 43302

SYLLABUS:

2009-037

A person who is employed by a court of common pleas as the court's computer systems administrator is in the classified service for purposes of R.C. Chapter 124, unless the duties of that position place that position within a category of unclassified employees set forth in R.C. 124.11(A).



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

October 1, 2009

OPINION NO. 2009-037

The Honorable Brent W. Yager
Marion County Prosecuting Attorney
134 East Center Street
Marion, Ohio 43302

Dear Prosecutor Yager:

You have requested an opinion concerning the civil service status of a county employee who was hired by the court of common pleas as a computer systems administrator. You have asked whether the position of computer systems administrator is in the classified service or in the unclassified service under R.C. 124.11.

Overview of Civil Service Status of Public Employees

The General Assembly enacted R.C. Chapter 124, which “provides a civil service system which is designed to fill positions based on merit and fitness ascertained, as far as practicable, by examination,” *Yarosh v. Becane*, 63 Ohio St. 2d 5, 9, 406 N.E.2d 1355 (1980), in order to carry out the mandate of Ohio Const. art. XV, § 10.¹ For purposes of R.C. Chapter 124, the term “civil service” includes, with certain exceptions, “all offices and *positions of trust or employment* in the service of the state and in the service of the *counties*, cities, city health districts, general health districts, and city school districts of the state.” R.C. 124.01(A) (emphasis added).²

¹ Ohio Const. art. XV, § 10 states: “Appointments and promotions in the civil service of the state, the several *counties*, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be passed providing for the enforcement of this provision.” (Emphasis added.)

² See generally, e.g., 2 Ohio Admin. Code 123:1-1-07 (“[e]ach board of county commissioners and elected official, board, agency, or appointing authority of a county shall be covered by these rules governing personnel practices unless the board, elected official, agency, or appointing authority adopts other rules in accordance with Chapter 124. and Chapter 325. of the Revised Code”); 2 Ohio Admin. Code Chapter 123:1-8 (county classifications).

A fundamental element of the civil service system is its placement of the positions regulated thereunder into either the classified or unclassified civil service. As explained by the *Yarosh* court:

R.C. 124.11 divides the civil service into the classified and unclassified service. . . . Employees in the classified service can only be removed for good cause and only after the procedures enumerated in R.C. 124.34 and the rules and regulations thereunder are followed. Positions in the unclassified service require qualities that the General Assembly has deemed are not determinable by examination. Employees in the unclassified service do not receive the protections afforded employees in the classified service.

Yarosh v. Becane, 63 Ohio St. 2d at 9.

For purposes of R.C. Chapter 124, persons employed by a court of common pleas are employees in the service of the county and, as such, are in either the classified or unclassified civil service. *See, e.g., Barr v. Harrison County Common Pleas Court*, 2006-Ohio-1348, 2006 Ohio App. LEXIS 1211 (Franklin County); *Honaker v. Scioto County Common Pleas Court*, No. 92-CA-2087 & 92-CA-2088, 1993 Ohio App. LEXIS 5964 (Scioto County 1993).

Classified and Unclassified Civil Service Positions

To determine whether a particular civil service position is in the classified or unclassified civil service, one must begin by examining R.C. 124.11. R.C. 124.11(A) lists various positions that are expressly included in the unclassified service, *e.g.*, R.C. 124.11(A)(3)(b) (including, among others, “heads of all departments appointed by a board of county commissioners”); R.C. 124.11(A)(8) (including, among others, “four clerical and administrative support employees for each board of county commissioners and one such employee for each county commissioner”); R.C. 124.11(A)(9) (including, among others and with certain exceptions, “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)(32)(“[e]mployees placed in the unclassified service by another section of the Revised Code”). *See generally Suso v. Ohio Dept. of Dev.*, 93 Ohio App. 3d 493, 499, 639 N.E.2d 117 (Franklin County 1993), (“R.C. 124.11 is not the final arbiter of whether a given position is in the classified or unclassified civil service. Rather, where there is language elsewhere in the Revised Code, expressly designating a certain position as being in either the classified or unclassified service or where there is language wherein the court can imply such legislative designation, then that language controls as to the classified or unclassified nature of the position” (citation omitted)).

In contrast, R.C. 124.11(B) defines the classified service as including, with certain exceptions, “all persons in the employ of the state and the several *counties*, cities, city health districts, general health districts, and city school districts of the state, *not specifically included in the unclassified service.*” R.C. 124.11(B) (emphasis added). As characterized by the court in

Yarosh v. Becane, 63 Ohio St. 2d at 9, “[p]ositions in the classified service are those for which merit and fitness can be determined by examination.”

In certain instances, however, whether a position is classified or unclassified depends upon the nature of the duties assigned to and performed by the employee holding that position. See, e.g., *Barr v. Harrison County Common Pleas Court*, at ¶10 (whether a position is classified or unclassified depends upon “the actual job duties performed by the employee, regardless of the employee’s nominal title”); *Baker v. Columbiana County Auditor*, 2004-Ohio-839, 2004 Ohio App. LEXIS 755 (Franklin County), at ¶15 (“[t]he actual duties assigned to and performed by the employee will determine the employee’s status” as classified or unclassified); *Suso v. Ohio Dept. of Dev.*, 93 Ohio App. 3d at 502 (“the true test of an employee’s status turns on the duties actually delegated and performed by the employee”).

Common Pleas Court Computer Systems Administrator

By way of background, you have informed us that the court of common pleas determined that the court’s efficiency would be improved if the computer systems of certain of the court’s divisions, as well as that of the office of the clerk of courts, were compatible. The cost of this project was to be funded, at least in part, by a fee imposed by the court under R.C. 2303.201(E).³ As part of this special project, the court employed a person as its computer systems administrator to plan and implement the new system.

You question whether the position of computer systems administrator created by the court is within the classified or unclassified service. Because facts in addition to those you provided may also affect the determination of the classified or unclassified status of a position

³ R.C. 2303.201(E) states, in pertinent part:

(E)(1) The court of common pleas may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for *special projects* of the court, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the *acquisition of equipment*, the *hiring and training of staff*, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

....

All moneys collected under division (E) of this section shall be paid to the county treasurer for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. (Emphasis added.)

held by a particular individual, we cannot determine whether the employee currently holding the position about which you ask is in the classified or unclassified service. *See, e.g., Chubb v. Ohio Bureau of Workers' Comp.*, 81 Ohio St. 3d 275, 277, 690 N.E.2d 1267 (1998) (holding that “in an appeal pursuant to R.C. 124.34 by a terminated public employee who claims classified status, the state may assert defenses of waiver and estoppel if the employee has accepted appointment to a position designated as unclassified and also has accepted the benefits of that unclassified position. We also hold that the employee’s actual job duties need not fall within the unclassified status in order for waiver or estoppel to apply”). Whether circumstances exist that affect the civil service status of a particular public employee is a question of fact that cannot be made by means of a formal opinion of the Attorney General. *See, e.g., 1983 Op. Att’y Gen. No. 83-087 at 2-342* (“[t]he determination of particular parties’ rights is a matter which falls within the jurisdiction of the judiciary”); *1983 Op. Att’y Gen. No. 83-057 at 2-232* (“[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary”). We can advise you, however, of the legal principles that determine whether a position such as you describe is in the classified or unclassified service.

We begin by noting that the position of computer systems administrator of the court of common pleas was created by the court, rather than by statute or administrative rule, to carry out the court’s computerization project. We will assume for purposes of discussion, therefore, that the position of computer systems administrator of a court of common pleas has not been expressly designated by statute or rule as being in either the classified or unclassified service. In order for the position you describe to be included in the unclassified service, therefore, the duties assigned to and performed by the person holding that position must place that position within one of the categories of unclassified positions listed in R.C. 124.11(A). *See, e.g., Barr v. Harrison County Common Pleas Court; Baker v. Columbiana County Auditor; Suso v. Ohio Dept. of Dev.*

One category of unclassified positions that may include the position you describe appears in R.C. 124.11(A)(9),⁴ which includes, among others, certain fiduciary and administrative

⁴ R.C. 124.11(A)(9) includes:

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.)

employees of county officials, as well as “employees of such county officials whose fitness would be impractical to determine by competitive examination.” As explained by the *Yarosh* court:

R.C. 124.11(A)(9) recognizes that there are certain positions in the public service in which intangible personal qualities are essential prerequisites to appointment. Such qualities are impossible to ascertain by examination. Deputies or assistants who are employed by and are directly responsible to an elected county official and who are in a fiduciary or administrative relationship with that official are in such positions.

63 Ohio St. 2d at 10.

The fiduciary and administrative exemptions from classified service created by R.C. 124.11(A)(9) are separate and distinct. *State ex rel. Baker v. State Personnel Bd. of Review*, 85 Ohio St. 3d 640, 710 N.E.2d 706 (1999). Whether a particular position is fiduciary or administrative for purposes of R.C. 124.11(A)(9) is a question of fact. *See, e.g., Rarick v. Bd. of Comm’rs*, 63 Ohio St. 2d 34, 38, 406 N.E.2d 1101 (1980) (finding that the positions held by two court employees “involved two duties, assigned and performed, which did place them in the unclassified service. These are the duty to purchase supplies through blanket purchase orders and the duty to supervise and arrange for the work of the building staff”; the former duty requiring the qualities of honesty and judgment, the latter requiring personal judgment and supervisory abilities); *In re Pratt*, 40 Ohio St. 2d 107, 115, 321 N.E.2d 603 (1974) (whether a deputy sheriff is in a fiduciary relationship with the sheriff “is one of fact, not of title, and can only be answered by examination of the duties assigned to and performed by the deputy”). *See generally* note 3, *supra*.

The courts have variously described the nature of duties performed by an employee that place such an employee in a fiduciary relationship with the employer. For example, in the syllabus of *State ex rel. Charlton v. Corrigan*, 36 Ohio St. 3d 68, 521 N.E.2d 804 (1988), the court found that a position, the essential qualifications for which included “a high degree of trust, confidence, reliance, integrity and fidelity,” was a fiduciary position for purposes of R.C. 124.11(A)(9). *See also In re Pratt*, 40 Ohio St. 2d at 115 (describing a “fiduciary relationship” as “one in which special confidence and trust is reposed in the *integrity* and *fidelity* of another and there is a *resulting position of superiority or influence*, acquired by virtue of this special trust” (emphasis added)). The qualifications of a position that indicate an administrative relationship between the employer and employee holding that position, on the other hand, have been described as those that require the employee to exercise “personal judgment and leadership abilities,” *Yarosh v. Becane*, (syllabus, paragraph 4), to formulate policy, as well as to execute that policy through the supervision of the daily activities of subordinate employees, *id.* at 12. *See also Smith v. Sushka*, 103 Ohio App. 3d 465, 659 N.E.2d 875 (Washington County 1995).

In determining whether particular positions held by employees of courts of common pleas are of a fiduciary or administrative nature for purposes of R.C. 124.11(A)(9), the courts have

found that even if only a small portion of the duties of such an employee are fiduciary or administrative, the employee holds a position in the unclassified service. *See, e.g., Barr v. Harrison County Common Pleas Court*, (finding that a common pleas court employee who performed “some” duties of a fiduciary nature, although the bulk of her duties were those of a classified position, was in the unclassified service); *Honaker v. Scioto County Common Pleas Court*, (finding that court employees whose duties were primarily those of a classified position, but who also performed “minimal” duties of a position assigned to the unclassified service, were in the unclassified service).⁵ Thus, if the person serving as the court’s computer systems administrator performs duties of a fiduciary or administrative nature, that employee is in the unclassified civil service under R.C. 124.11(A)(9), even if such fiduciary or administrative duties are only a small portion of the employee’s overall duties.

As a final matter, we note that R.C. 124.11(A)(10) includes within the unclassified service:

Bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise or who handle public moneys or secured documents, and such officers and *employees of courts of record* and such deputies of clerks of the courts of common pleas *as the director of administrative services finds it impracticable to determine their fitness by competitive examination*. (Emphasis added.)

While the position of computer systems administrator for a court of common pleas is not one of the positions expressly mentioned in R.C. 124.11(A)(10), *e.g.*, bailiff or constable, it is possible that the position is one that the Director of Administrative Services has determined the merit and fitness for which cannot effectively be determined through competitive examination. If the Director has made that determination, the person serving as the court’s computer systems administrator is in the unclassified service under R.C. 124.11(A)(10).

⁵ In addition, the court in *Honaker v. Scioto County Common Pleas Court*, No. 92-CA-2087 & 92-CA-2088, 1993 Ohio App. LEXIS 5964 (Scioto County 1993), determined that the burden is upon the employing court to prove by a preponderance of evidence that an employee of the court is an unclassified employee.

Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised that a person who is employed by a court of common pleas as the court's computer systems administrator is in the classified service for purposes of R.C. Chapter 124, unless the duties of that position place that position within a category of unclassified employees set forth in R.C. 124.11(A).

Respectfully,



RICHARD CORDRAY
Ohio Attorney General