

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Mike Roth,

*Appellant,*

v.

Case No. 09-REM-08-0373

Oakview Juvenile Residential Center,

*Appellee*

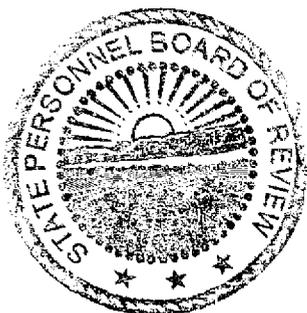
**ORDER**

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** since this Board does not possess subject matter jurisdiction over Appellee, pursuant to O.R.C. § 124.03.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

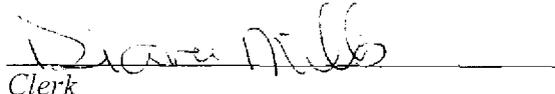


  
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J. Richard Lumpe, *Chairman*

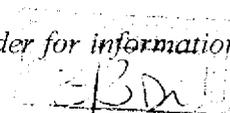
**CERTIFICATION**

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, March 3, 2010.

  
\_\_\_\_\_  
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**

Mike Roth

Case No. 09-REM-08-0373

*Appellant*

v.

January 28, 2010

Oakview Juvenile Residential Center

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on January 28, 2010 upon Appellee's response to this Board's questionnaire, filed on November 5, 2009; the Notice of Withdrawal of Counsel, filed on November 6, 2009, by the Office of the Attorney General; Appellant Roth's Response to Appellee Questionnaire, filed on November 12, 2009; and Appellee's Reply to Appellant's Response to Questionnaire, filed on November 20, 2009.

Appellee argues this Board is without jurisdiction to hear this appeal as Appellee is not a state or county agency and therefore, Appellant Roth is not an employee of the classified state service. Appellant Roth did not disagree with Appellee's arguments but instead argues that Appellee has consented to be under the jurisdiction of this Board by putting language in its policies that its employees can file an appeal to this Board.

Unlike a court of general jurisdiction, this Board does not possess equity jurisdiction. The Board is a creature of statute and derives its authority and jurisdiction from statute. Section 124.03 of the Ohio Revised Code establishes the jurisdiction of this Board and states as follows, in pertinent part:

A) The state personnel board of review shall exercise the following powers and perform the following duties:

- (1) **Hear appeals, as provided by law, of employees in the classified state service** from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. (Emphasis added).

The terms "classified" and "state service" are defined in section 124.01 of the Ohio Revised Code. Those terms are defined as follows:

(B) "State service" includes all offices and positions in the service of the state and the counties and general health districts of the state. "State service" does not include offices and positions in the service of the cities, city health districts, and city school districts of the state.

(C) "Classified service" means the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships.

As was stated in Appellee's attachment to its response to the questionnaire, Appellee is a multi-county community based correctional facility which was established pursuant to section 2301.51 of the Ohio Revised Code. It is governed by a board consisting of six judges from the juvenile courts in six participating counties. Appellee is correct in its assertion that it is not under the jurisdiction of this Board, as it does not meet the definition of "state service" since it is a multi-county facility. See the cases of *Manns v. Corrections Comm. of Northwest Ohio* (PBR) 92-REM-07-0145; *In re Ford* (1982), 3 Ohio App.3d 416; *Davis v. Wood Cty. Juv. Residential Center*, (PBR) 98-RED-01-0037; *Klug v. Oakville Juv. Rehab. Dist.*, (PBR) 96-REM-01-0055; *Miller v. SWACO* (PBR) 94-REM-03-0076; and *Langer v. SWACO* (PBR) 94-REM-03-0077 and Ohio Attorney General Opinion 1983 No. 83-

064. This Board has consistently held in those cases that a multi-county entity does not fall under the jurisdiction that has been conferred on this Board by statute.

In its response to Appellee's reply to the questionnaire and attachment, Appellant Roth did not dispute that Appellee does not meet the definition of "classified state service". Appellant Roth's only argument was that because Appellee's personnel policies state that an employee can file an appeal with this Board, then Appellee has consented to be under the jurisdiction of this Board. This argument is not persuasive as Appellee cannot confer jurisdiction on this Board where none exists. As stated above, this Board has only the jurisdiction granted to it by statute and Appellee cannot confer additional jurisdiction to this Board by consent. (See *Nelson v. Tecumseh Consortium*, (PBR) 88-SUS-10-0542).

Therefore, inasmuch as this Board does not possess subject matter jurisdiction over Appellee, it is my **RECOMMENDATION** that this appeal be **DISMISSED**.

  
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Marcie M. Scholl  
Administrative Law Judge

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