

plaintiff that she would seek approval for a higher salary step on plaintiff's behalf.

{¶ 4} On December 11, 2002, Laing sent a memo to John Demaree, defendant's human resource management administrator, wherein Laing requested that plaintiff's starting wages begin at Step 3. (Defendant's Exhibit D.) Pursuant to defendant's policy regarding advance step appointments (Defendant's Exhibit T) a request for plaintiff's advanced step appointment was submitted to Ramona Swayne, administrator of the human resources division of the Department of Administrative Services (DAS). On December 17, 2002, Swayne approved plaintiff's advanced step appointment at Step 3, pay range 13. (Defendant's Exhibit F.)

{¶ 5} On December 17, 2002, Laing received an e-mail from Kimberly McKinney, human resources specialist, wherein she stated that plaintiff had been approved for the Step 3 advancement. Laing responded to the e-mail by asking what the starting salary and hourly rate would be, and McKinney replied that the hourly rate would be \$25.95 with an annual salary of \$53,976. (Defendant's Exhibit H.) Laing then sent an e-mail to plaintiff stating that the Governor's office had approved an increase in her starting salary to Step 3, with a starting salary of \$25.95 per hour (\$53,976 annually). (Defendant's Exhibit I.) Plaintiff accepted the position and began her employment with defendant on January 27, 2003.

{¶ 6} In February 2003, plaintiff requested a letter from defendant's division of human resources confirming her date of hire and hourly rate. Plaintiff intended to use the letter for a mortgage loan application. On February 18, 2003, plaintiff

received a letter from McKinney that stated plaintiff's hourly rate was \$24.63.

{¶ 7} Upon receipt of the letter, plaintiff asked McKinney for clarification concerning her hourly rate. McKinney told plaintiff that Step 3 of Pay Range 13 was \$24.63 and forwarded a copy of the state of Ohio pay tables for her to review. In response, plaintiff gave McKinney a copy of the December 17, 2002, e-mail from Laing that stated that the Step 3 hourly rate was \$25.95. After reviewing the e-mail and the pay table, McKinney told plaintiff that she must have looked at the wrong line on the pay table when she told Laing the Step 3 rate. McKinney apologized for the mistake.

{¶ 8} Plaintiff then sent an e-mail to Laing explaining what had occurred and asking Laing how to proceed in obtaining the \$2,745.60 difference of her starting salary. Laing investigated the matter but plaintiff's starting salary was not increased. At the time of trial, plaintiff was still employed by defendant.

{¶ 9} Plaintiff asserts that defendant breached its employment contract with her by not paying her the hourly rate quoted in Laing's e-mail. In the alternative, plaintiff asserts that she relied to her detriment on the hourly rate quoted by Laing and that, consequently, defendant should be found liable to her under a theory of promissory estoppel. Defendant asserts that plaintiff was hired at the statutory Step 3 rate of \$24.63 per hour and that it is not obligated to pay plaintiff the mistaken rate quoted in Laing's e-mail.

BREACH OF CONTRACT

{¶ 10} Plaintiff asserts that the December 17, 2002, e-mail from Laing constitutes an enforceable employment contract. "In order for plaintiff to prevail on her breach of contract claim, she must prove by a preponderance of the evidence that she negotiated and entered into either a written or oral contract with the officers of the state designated by law to have the authority to negotiate and make contracts." *Drake v. Medical College of Ohio* (Sept. 24, 1996), Court of Claims No. 95-03576.

{¶ 11} R.C. 124.06 states:

{¶ 12} "No person shall be appointed *** as an officer or employee in the civil service, in any manner or by any means other than those prescribed in this chapter, and the rules of the director of administrative services ***."

{¶ 13} R.C. 124.15(E) states:

{¶ 14} "(E) New employees paid in accordance with schedule B of division (A) of this section or schedule E-1 of section 124.152 [124.15.2] of the Revised Code shall be employed at the minimum rate established for the range unless otherwise provided. Employees with qualifications that are beyond the minimum normally required for the position and that are determined by the director to be exceptional may be employed in, or may be transferred or promoted to, a position at an advanced step of the range. ***"

{¶ 15} Ohio Adm.Code 123:1-45-01 allows the DAS director to issue directives to implement the provisions of department rules and to establish the necessary forms or procedures that carry out Chapter 124 of the Revised Code.

{¶ 16} As stated above, Defendant's Exhibit T sets forth its policy regarding advance step appointments. The exhibits in

evidence demonstrate that defendant followed the proper procedures to hire plaintiff at the advanced rate of Step 3.

{¶ 17} The magistrate finds that the December 17, 2002, e-mail does not constitute plaintiff's employment contract. R.C. 124.152(B) sets forth the rates of pay applicable to classified, exempt state employees. Laing did not have authority to offer plaintiff anything other than what had been approved by defendant, Step 3, range 13. Public employees may not bind the state by acts outside of their express authority. *Kirk Williams Co. v. Ohio State Univ. Bd. of Trustees* (June 13, 1989), Franklin App. No. 88AP-697.

{¶ 18} Moreover, based upon the applicable pay rate table (Defendant's Exhibit G) and McKinney's testimony, the magistrate finds that the rate of pay quoted in the e-mail was a mistake and that there was no meeting of the minds. "A meeting of the minds as to the essential terms of the contract is a requirement to enforcing the contract." *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, at ¶16. "Regardless of negligence, or failure to exercise care when entering into a contract, a party is entitled to show that there was no meeting of the minds, or that the meeting [of the minds] was on different terms." *Parklawn Manor, Inc. v. Jennings-Lawrence Co.* (1962), 119 Ohio App. 151, 156.

{¶ 19} In short, plaintiff was paid in accordance with the statutory rate and thus, defendant did not breach her employment agreement.

PROMISSORY ESTOPPEL

{¶ 20} The Tenth District Court of Appeals recently stated: "as a general rule, promissory estoppel does not apply against the

state, its agencies, arms and agents.' The basis for this rule is that '[a] properly functioning government cannot tolerate individual state actors binding the state to actions that exceed or contravene its authority.' In *Ohio Assoc. of Pub. School Emp.*, this court noted that we have 'consistently echoed the rationale for the general rule' and 'refused to apply promissory estoppel to contravene statutory authority.'" (Citations omitted.) *Raabe v. Ohio Bd. of Speech-Language Pathology and Audiology*, Franklin App. No. 04AP-954, 2005-Ohio-2335, at ¶29.

{¶ 21} Assuming, arguendo, that Laing attempted to negotiate plaintiff's salary to a rate higher than Step 3, any representations that she made would be contrary to express statutory law. *Drake v. Medical College of Ohio* (1997), 120 Ohio App.3d 493.

{¶ 22} Moreover, mistaken advice or opinions of a government agent do not give rise to a claim of promissory estoppel. *Halluer v. Emigh* (1992), 81 Ohio App.3d 312. The court finds that the mistaken rate of pay as set forth in Laing's e-mail does not give rise to a claim of promissory estoppel.

{¶ 23} For the foregoing reasons, the magistrate finds that plaintiff has failed to prove any of her claims by a preponderance of the evidence and accordingly, recommends that judgment be entered in favor of defendant.

{¶ 24} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).

HOLLY TRUE SHAVER
Magistrate

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HTS/cmd
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