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PUBLIC UTILITIES COMMISSION—GOVERNOR, APPOINTIVE POWER—TERMS OF OFFICE EXPIRE IN EVERY SIXTH YEAR FOLLOWING FIRST DAY OF FEBRUARY, 1915, 1917, 1919, RESPECTIVELY—TERM OF OFFICE OF MEMBER COMMENCES ON DATE MEMBER QUALIFIES FOR OFFICE—TERM OF OFFICE OF INCUMBENT EXPIRES WHEN SUCCESSOR APPOINTED—§§3.10, 4901.02, 4901.06, R.C.

SYLLABUS:

1. Under the provisions of Section 4901.02, Revised Code, and of former Section 487, General Code, the terms of office of members of the Public Utilities Commission expire in every sixth year following the first day of February in 1915, 1917 and 1919, respectively.

2. Under the provisions of Sections 3.01, 4901.02 and 4901.06, Revised Code, the term of office for a member of the Public Utilities Commission commences on the date that such member qualified for office, and an incumbent member whose term has expired serves until his successor is appointed and qualified for office.

Columbus, Ohio, August 13, 1959

Hon. Michael V. DiSalle
Governor of the State of Ohio
Columbus, Ohio

Dear Governor DiSalle:

I have before me your request for my opinion, which request may be summarized as follows:

Mr. W was appointed to the Public Utilities Commission for the term ending on February 1, 1959. No appointment having been made for the new term, Mr. W continues to serve in this capacity. On August 4, 1959, Mr. K was appointed by the Governor to the term ending February 1, 1965 (the same term in which Mr. W has been holding over). Mr. K's appointment has not yet been confirmed by the Senate. You ask:

1. Whether or not the term to which Mr. K has been appointed continues for six years after the date of his appointment, August 4, 1959, or whether his term should expire on February 1, 1965. You state: "If his term runs to February 1, 1965, it is evident that he in fact has only a term of five years and six months. If he were to sue for salary for a full six year term under these circumstances, could he receiver?"

2. On what date does the term to which Mr. K has been appointed commence?

Section 4901.02, Revised Code, dealing with the organization of the Public Utilities Commission, reads:

"There is hereby created a public utilities commission of Ohio, by which name the commission may sue and be sued. The commission shall consist of three public utilities commissioners appointed by the governor with the advice and consent of the senate for a term of six years. The commission shall possess the powers and duties specified in, as well as all powers necessary and proper to carry out the purposes of, Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4925. of the Revised Code. Vacancies shall be filled for unexpired terms in the same manner as original appointments are made. One of such commissioners, to be designated by the governor, shall, during the term of the appointing governor, be the chairman of the commission. Not more than two of said commissioners shall belong to or be affiliated with the same political party.

"The commission shall be a part of the department of commerce for administrative purposes, in that the director of commerce shall be ex officio secretary of such commission."

As you note in your letter, this section does not specify the beginning and ending dates of the terms of office of members of the Public Utilities Commission, merely stating:

" * * The commission shall consist of three public utilities commissioners appointed by the governor with the advice and consent of the senate for a term of six years. * * *"

Section 4901.02, *supra* was formerly Section 487, General Code, the new section number and certain language changes being enacted in House Bill No. 1 of the 100th General Assembly (effective October 1, 1953), the code revision act. Section 487, *supra*, contained the following language:

"* * * the governor shall, with the advice and consent of the senate, appoint a member whose term shall expire on the first day of February, 1915; another whose term shall expire on the first day of February, 1917, and another whose term shall expire on the first day of February, 1919; and thereafter each member shall be appointed and confirmed for a term of six years. * * *"

While said Section 487, General Code, has been superseded by Section 4901.02, Revised Code, I am of the opinion that these sections must

be read together to ascertain the intent of the Legislature as to terms of office. On this point, it is stated in 37 Ohio Jurisprudence, section 330, page 588:

“The history of legislation on the subject involved may assist in the interpretation of a particular statute, and therefore, resort may be had to the various forms in which such earlier statutes had been enacted by the legislature. * * * Moreover, the history of statutory law on the subject involved may show the general policy of the state, which is useful as an aid in the construction of the later statute. * * *”

Also, Section 1.24, Revised Code, a part of House Bill No. 1, *supra*, reads:

“That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provision, and not as new enactments.”

One of my predecessors, in three instances, held that by reason of this section certain provisions of the Revised Code, as enacted in the code revision bill, must be deemed to be a mere restatement without substantive change of the former provisions as contained in the General Code. See Opinions Nos. 5965, 5984 and 6015, Opinions of the Attorney General for 1955. I am in full accord with the conclusions reached in these opinions and am of the opinion that the same rule should apply in the instant case.

On considering the provisions of Section 487, General Code, as set forth above, I cannot agree with the argument that the Legislature intended to give each commission member a full term of six years no matter when appointment and qualification occurred. Certainly the Legislature intended that one term should follow another and that each member should serve a maximum of six years in regular term. The termination dates for the first three terms were specifically set as the first day of February in 1915, 1917, and 1919, and thereafter “each member to be appointed and confirmed for a term of six years.” The language used definitely shows an intention that terms should run consecutively from the original expiration dates and that the date for appointment to the new term would be the

second day of February every two years. Otherwise, why would the terms have been staggered as they were in the first instance?

Up to this time there seems to have been no question that the terms of the original members of the Public Utilities Commission were to expire on the first day of February in 1915, 1917 and 1919 and that terms of successors would expire every six years thereafter. This is evident in that, since the expiration of the original terms, all appointments have been made on this basis. Moreover, your letter states that the appointment of Mr. K was to a term beginning August 14, 1959 and ending February 1, 1965, which appointment would follow the past interpretation of Section 487, General Code, and Section 4901.02, Revised Code.

Regarding the effect of past interpretation of a statute, it is stated in 37 Ohio Jurisprudence, section 382 at pages 689 and 690:

“There may be circumstances under which a court, in construing a statute, may take into consideration the manner in which such statute was interpreted by those who were affected by the law * * * Indeed, it has even been declared that in some cases the practical construction given to a statute for a great many years is entitled to more than ordinary weight. Such a practical construction of a statute will be followed where all other suggested constructions are at least as doubtful as the practical one adopted by the community. * * *”

It is, therefore, my opinion that the original terms of office of Public Utilities Commissioners expired on the first day of February in 1915, 1917 and 1919, respectively, and subsequent terms every six years thereafter. Accordingly, in the instant case, the term to which Mr. K has been appointed will expire on February 1, 1965.

Your second question asks on what date does the term to which Mr. K has been appointed commence. As discussed above, the actual term began on February 2, 1959, the question, thus, being, when does Mr. K begin to serve such term?

As noted earlier, Section 4901.02, Revised Code, requires that the appointment of the Governor must be confirmed by the Senate. Also, Section 4901.06, Revised Code, reads:

“Before entering upon the duties of his office each public utilities commissioner shall take and subscribe to an oath of office, in writing, which shall be filed in the office of the secretary of state, and shall give a bond of five thousand dollars, with a suffi-

cient surety approved by the treasurer of state; after such approval the bond shall be filed with the secretary of state. If such bond is executed by a surety company the premiums on it shall be paid from the funds appropriated for the expense of the public utilities commission."

Of importance in this question is Section 3.01, Revised Code, reading:

"A person holding an office or public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state."

In interpreting Section 487, General Code, now Section 4901.02, Revised Code, and Section 8, General Code, now Section 3.01, Revised Code, one of my predecessors in Opinion No. 322, Opinions of the Attorney General for 1923, page 245, at page 246, stated:

"The only conclusion to be drawn from section 487 G. C. is, that a member who has once been appointed and confirmed by the senate is entitled to continue in office until his successor also is so appointed and confirmed, subject only to the authority conferred upon the governor by section 12 G. C. to make recess appointments as hereinafter explained. And not only that section, but section 8 G. C., which provides that 'A person holding an office or public trust shall continue therein until his successor * * * is appointed and qualified', also vouchsafes to the incumbent of office such right. *State v. Howe*, 25 O. S. 588; *State v. Bryson*, 44 O. S. 457; *State v. Boucher*, 3 N. D. 389 (21 L.R.A. 539); 22 Ruling Case Law, page 433; 29 Cyc., p. 1372.

"In *state v. Home*, *supra*, the court held:

"1. Where an officer appointed by the governor, by and with the advice and consent of the senate, is authorized by law to hold his office for a term of three years, and until his successor is made by the regular appointing power at the expiration of his term of three years, the office does not become vacant; but the incumbent holds over as a de jure officer until his successor is duly appointed and qualified.

"2. Section 20 of the second article of the constitution, which enjoins upon the general assembly the duty of fixing the term of office and the compensation of all officers not provided for in the constitution, imposes no restraint on the power of the general assembly to extend the tenure of an officer beyond his term, and until his successor is qualified, in a case where the duration of such tenure is not limited by the constitution.'"

Accordingly, it is my opinion that, in the instant case, the term of Mr. K will not commence until his appointment is confirmed by the

Senate and he has complied with the provisions of Section 4901.06, Revised Code, relative to the oath of office and the giving of a bond, and Mr. W will continue to serve until his successor is elected and qualified.

Answering your specific questions, therefore, it is my opinion and you are advised :

1. Under the provisions of Section 4901.02, Revised Code, and of former Section 487, General Code, the terms of office of members of the Public Utilities Commission expire in every sixth year following the first day of February in 1915, 1917 and 1919, respectively.

2. Under the provisions of Sections 3.01, 4901.02 and 4901.06, Revised Code, the term of office for a member of the Public Utilities Commission commences on the date that such member qualifies for office, and an incumbent member whose term has expired serves until his successor is appointed and qualified for office.

Respectfully,

MARK MCELROY

Attorney General