

OPINION NO. 94-065**Syllabus:**

R.C. 5126.04 does not permit the removal of a member of a county board of mental retardation and developmental disabilities for failure, during a prior term of office, to attend an in-service training session, as required by R.C. 5126.02(B).

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, October 13, 1994

You have requested an opinion concerning the authority of a board of county commissioners to remove a person whom it has appointed to serve on a county board of mental retardation and developmental disabilities. You specifically ask: "May a county board of commissioners remove an appointee to a county board of mental retardation and developmental disabilities under [R.C. 5126.04] for failure to attend an in-service in a prior term of office?" Your letter sets forth the following background information:

A member was re-appointed for a four year term beginning on January 4, 1994. His prior term ended December 31, 1993.

The Erie County Board of MR/DD determined in February, 1994, that the member had not completed an in-service [training session] in the calendar year of 1993, as required by both [R.C. 5126.02 and .04]. The Erie County Board of MR/DD would like to notify the Erie County Board of Commissioners in

accordance with [R.C. 5126.04] of the necessity for a hearing, but is uncertain whether or not the failure to comply with a requirement in a prior term makes removal of a member mandatory in a current term.

Appointment of Members to County Board of Mental Retardation and Developmental Disabilities

As noted in your letter, pursuant to R.C. 5126.02(A), the board of county commissioners of each county appoints five of the seven members of the county board of mental retardation and developmental disabilities, the remaining two members being appointed by the probate judge of the county. The term of office of each member is four years. *Id.* Appointments other than those to fill a vacancy "shall be made no later than the last day of November of each year, and the term of office shall commence on the date of the stated annual organizational meeting." *Id.* See generally R.C. 5126.04 (requiring each county board of mental retardation and developmental disabilities to hold an organizational meeting no later than the thirty-first day of January of each year).

Eligibility for Membership on, and Removal from, County Board of Mental Retardation and Developmental Disabilities

R.C. 5126.02(B) requires each board member to attend "at least one in-service training session provided by or approved by the department of mental retardation and developmental disabilities." Failure to meet this requirement is one reason for which a board member shall be removed, as prescribed by R.C. 5126.04, which states in pertinent part:

A board member shall be removed from the board by the appointing authority for neglect of duty, misconduct, malfeasance, *failure to attend at least one in-service training session each year*, a violation of division (A), (B), (C), or (D) of [R.C. 5126.03],¹ or upon the absence of a member within one year from either four regularly scheduled board meetings or from two regularly scheduled board meetings if the member gave no prior notice of his absence. This removal provision does not apply to absences from special meetings or work sessions. The board shall supply the board member and his appointing authority with written notice of the charges against the member. The appointing authority shall afford the member an opportunity for a hearing, in accordance with procedures it adopts, and shall, upon determining that the charges are accurate, remove the member and appoint another person to complete the member's term. (Emphasis and footnote added.)

As concluded in 1989 Op. Att'y Gen. No. 89-057, syllabus, paragraph six: "An appointing authority has a mandatory duty to remove a member of a county board of mental retardation and developmental disabilities upon determining after a hearing that such board member failed to attend at least one in-service training session each year."

Not addressed in Op. No. 89-057, however, is whether the failure of a member of a county board of mental retardation and developmental disabilities to attend the required in-

¹ R.C. 5126.03 (A) through (D) establish prohibitions against certain persons serving as members of a county board of mental retardation and developmental disabilities.

service training during a previous term of membership on the board is a basis for removing that member under R.C. 5126.04 from his current term. It is well established that because statutes governing the removal of public officers are quasi-penal, they are to be strictly construed. *State ex rel. Stokes v. Probate Court*, 22 Ohio St. 2d 120, 258 N.E.2d 594 (1970) (syllabus, paragraph one); *McMillen v. Diehl*, 128 Ohio St. 212, 190 N.E. 567 (1934).

The court in *State ex rel. Stokes* considered whether R.C. 733.72, which provided for the removal of an incumbent municipal officer who "has been guilty of misfeasance or malfeasance in office," authorized removal of an officer for an offense committed in a prior term, and stated:

This language is ambiguous and conceivably could apply to either present or prior terms of office. Strict construction however would require limitation of the word "office" to the single term in which the offense occurred. In the absence of clear legislative language making conduct in prior terms a ground for removal from office under this section, the misfeasance or malfeasance alleged as a ground for removal must occur during the term from which removal is sought and be subsequent to the exercise of the power to elect vested in the electors of the municipality.

22 Ohio St. 2d at 124, 258 N.E.2d at 596. *Cf. In re Coppola*, 155 Ohio St. 329, 332, 98 N.E.2d 807, 810 (1951) ("the General Assembly has the power to require reasonable qualifications for office and if a statute provides that misfeasance and malfeasance during a previous term shall be a ground for the removal of a public official during his existing term, such a statute must be given effect").

Although the office of member of a county board of mental retardation and developmental disabilities is an appointive office, R.C. 5126.02, the principles governing the removal from office set forth in *State ex rel. Stokes* apply equally to removals from office under R.C. 5126.04. Nothing in R.C. 5126.04 indicates that the General Assembly intended that a member's commission of any of the acts named therein during a prior term of office constitutes a basis for removal from office in a subsequent term. Thus, in accordance with a strict construction of the statute, the bases for removal set forth in R.C. 5126.04 must be read as referring to only those acts occurring during the term from which removal is sought. R.C. 5126.04 does not, therefore, permit the removal of a member of a county board of mental retardation and developmental disabilities for failure, during a previous term of office, to attend an in-service training session, as required by R.C. 5126.02(B).

Conclusion

In answer to your question, it is my opinion, and you are hereby advised that R.C. 5126.04 does not permit the removal of a member of a county board of mental retardation and developmental disabilities for failure, during a prior term of office, to attend an in-service training session, as required by R.C. 5126.02(B).