

Under Section 7 of the General Code, a person appointed to an office who refuses or neglects in all respects to qualify himself for the performance of such duties *within the time prescribed by law*, shall be deemed to have refused to accept the office to which he was appointed.

There is no time limit prescribed for the qualification of an appointee to the Civil Service Commission. I am informed by Mr. Emmons, and the information is confirmed by the Governor's secretary, that the Governor will have no objection to the member finishing the present legislative session as a member thereof. As long as neither the Governor nor the Senate objects, and as long as there remains a quorum on the Civil Service Commission, I do not think the question can otherwise be raised.

However, Section 486-5 of the General Code provides in part:

"Two members of the commission shall constitute a quorum for the transaction of business."

Under Section 8 of the General Code, which provides:

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

the present incumbent of the office has the right to hold over until his successor qualifies by taking the oath of office.

Therefore, I answer both of your questions in the affirmative.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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DIRECTOR OF HIGHWAYS—APPROVING PROPOSED AGREEMENT BETWEEN FAIRPORT, PAINESVILLE & EASTERN R. R. CO. AND DIRECTOR OF HIGHWAYS FOR CONSTRUCTION OF UNDERGRADE CROSSING.

SYLLABUS:

Approving agreement proposed to be entered into between the Fairport, Painesville & Eastern Railroad Company and the Director of Highways and Public Works for the construction by the railroad company of an undergrade crossing in Inter-County Highway No. 2.

COLUMBUS, OHIO, February 24, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date, to which is attached a form of agreement covering proposed Fairport, Painesville & Eastern Railroad Company Undergrade I. C. H. No. 2, Lake County.

You request my opinion as to your right, under the law, to enter into such a contract. Section 8895 of the General Code provides:

"Except as hereinafter provided, all crossings, hereinafter constructed, whether of highways by railroads, or of railroads by highways, shall be above or below the grade thereof."

Section 8896 of the General Code provides :

"Every railroad company building a new line of road, under its charter powers, across a highway, shall construct it above or below the grade of the highway, unless in the manner hereinafter provided, allowed to build it at grade. Such company may exercise the power contained in its charter and the general laws, for altering the grade and location of highways in order to avoid grade crossings."

These two sections now prevent the construction of new grade crossings except where authorized by court order under procedure outlined in Section 8898, et seq., of the General Code.

Specific authority is granted to the Director of Highways and Public Works as to the elimination of existing grade crossings by the provisions of Sections 6956-22, et seq., of the General Code, but these sections have no application to the construction of a new railroad. I find no statute which deals directly with the subject of new railroad crossings over state highways. However, in view of the fact that the Director of Highways and Public Works has complete authority over inter-county highways and main market roads for the purpose of constructing, improving, maintaining and repairing a state system of highways by virtue of Section 1178 of the General Code, and, under Section 7204-1a he is given authority to permit the placing of at least temporary obstructions within the limits of the inter-county highways and main market roads, it seems clear that your department is the proper representative of the public to agree upon the manner in which the crossings shall be made at other than grade.

I am therefore of the opinion that the Director of Highways and Public Works may lawfully enter into a contract authorizing the crossing of a highway of the state system by a railroad company at other than grade and setting forth the terms and conditions under which said crossing shall be constructed.

I have carefully examined the contract attached to your letter and have considered the pencil notations contained therein, to which you refer. I have rewritten this contract, incorporating certain corrections and also suggestions as to additional clauses which I deem necessary in order to effectuate an agreement that will safeguard the interests of the state. You will notice that in Section 4, it is now specified that traffic on the highway shall be maintained and protected during the construction by the first party. The form presented was silent as to whose duty this was. I am also adding a suggested section (Section 7) to the effect that all work shall be subject to final inspection and approval of the Director of Highways and Public Works.

I have also, in Section 9, provided a bond which is aimed to protect against any possible damage or expense to the state or the general public as a result of this work.

Being of the opinion that the Director can enter into a contract of this character, I believe that the articles of agreement submitted would be legal, but that the additional suggestions might well be incorporated for the best protection of the state's interests.

I am returning herewith the articles of agreement submitted, together with the new form as outlined above.

Respectfully,
EDWARD C. TURNER,
Attorney General.