

1342.

ELECTION LAWS—TERMS OF BOARD MEMBERS OF DEPUTY STATE SUPERVISORS AND INSPECTORS OF ELECTIONS EXPIRING IN ODD-NUMBERED YEARS EXTENDED UNTIL EVEN-NUMBERED YEARS.

SYLLABUS:

Under the provisions of Section 4785-8, General Code, as enacted by the 88th General Assembly, effective January 1, 1930, members of boards of deputy state supervisors and inspectors of elections and deputy state supervisors of elections whose terms expire on May 1 of odd numbered years should continue to act and be recognized as such until May 1 of the next even numbered years, when their successors should be appointed by the Secretary of State as therein provided.

COLUMBUS, OHIO, December 28, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Please permit me, as Secretary of State, to ask for an Opinion from you as to Sections 8 and 10 of Amended Substitute Bill No. 2, (known as the Election Laws of the State of Ohio,) and becoming effective January 1st, 1930.

Section 8 provides that members of the Boards of Elections shall serve for a term of four years. The same section further provides that ‘on the first day of May in even numbered years the Secretary of State shall appoint two of such board members,’ etc.

The section further provides that the members of present boards appointed under the old law ‘shall continue to act and be recognized as such for the terms for which they were appointed and until their successors have been chosen and have qualified as herein provided.’

Section 10 provides for the organization of the board and the appointment of a clerk (and in registration counties a deputy clerk) who shall serve for a period of two years.

Under the old election law of Ohio, deputy state supervisors of elections were appointed for a term of two years instead of four years, two members of opposite political parties being appointed the first of May of each year, while in deputy state supervisors and inspectors counties, under the old law, appointments were made of two members of opposite political faith, each two years for a four year period.

In a few of the deputy state supervisor and inspector counties, under the old law, some of the appointments for the four year terms came a year apart, with a three year interim before another appointment was made. As a result there are now deputy state supervisors commissioned whose terms will expire in 1931—an odd year, while the new law provides for appointments in the even years.

The question, therefore, is whether or not those deputy state supervisors of elections and deputy state supervisors and inspectors of elections, whose terms expire in 1931, will continue to serve until 1932? If so, then the question arises as to whether or not the new board members shall be appointed for a one year term so as to bring up the new appointments in 1932, as required under the new Code, or whether or not the appointments made at that time

will be to serve until May 1st, 1936? In other words, the question is, how shall the appointments be made so as to permit the Secretary of State to make appointments in the future that will coincide with the two-year appointment schedule as provided in Section 8?

In case your Opinion is to the effect that the present deputy state supervisors, whose terms expire May 1st, 1931, do not hold over, then the question arises as to whether or not it will be necessary for the board to reorganize at that time, or whether or not the two year organization plan, as set up in Section 10, will carry through to May 1st, 1932?"

Section 4785-8, General Code, 113 O. L. 311, to which you refer, provides:

"There shall be in each county of the state a board of elections consisting of four qualified electors of the county, who shall be appointed by the Secretary of State to serve for the term of four years and until their successors have been appointed and have qualified. On the first day of May in even numbered years the Secretary of State shall appoint two of such board members, one of whom shall be from the political party which cast the highest number of votes in the state for the office of governor at the last preceding state election, and the other shall be from the political party which cast the next highest vote for governor at such election. The members of the present boards of deputy state supervisors of elections and members of the boards of deputy state supervisors and inspectors of elections shall continue to act and be recognized as such for the terms for which they were appointed and until their successors have been chosen and have qualified as herein provided. All vacancies filled for unexpired terms and all appointments to new terms shall be made from the political party to which the vacating or outgoing member belonged, unless there is a third political party which cast a greater number of votes in the state at the last preceding state election for the office of governor than did the party to which the retiring member belonged, in which event the vacancy shall be filled from such third party."

Referring, first, to counties having deputy state supervisors of elections, Section 4803, General Code, provides that such boards shall consist of four members. Section 4804, General Code, provides that two members shall be appointed each year to serve two years. Section 4807, General Code, provides for appointments to fill vacancies when they occur, for the unexpired term. As you state, in all so-called deputy state supervisor counties, the terms of office of two members will expire in May, 1931. There is no difficulty encountered with respect to such members whose terms expire in May, 1930, it being expressly provided in Section 4785-8, *supra*, that present incumbents in office shall continue to act for the terms for which they were appointed. The same provision is, of course, applicable to such members whose terms expire in May, 1931, so that the question arises as to the scope of the provision in this section that the members of the present boards shall continue to act "until their successors have been chosen and qualified as herein provided." A careful examination of the language of the statute can, I believe, lead to only one conclusion, *viz.* that present members shall not only continue to act as such for the terms for which they were appointed but shall so continue until their successors have been chosen and qualified as provided in the section. Members may be chosen and qualified under the provisions of the section only on the first day of May in even numbered years or appointed to fill vacancies for unexpired terms. On May 1, 1931, at the expiration of the terms of office of two members in each so-called deputy state supervisor county, there will certainly be no authority to appoint persons to fill a

vacancy for unexpired terms of such members, as there will be no unexpired terms, the difficulty arising because of the fact that their terms will have expired. The Legislature has not made any provision (except in the cast of appointments to fill unexpired terms) for any appointments except in even numbered years. It follows that, since present members of such boards must, under the statute continue to act as such for the terms for which they were appointed and until their successors have been chosen and have qualified, on account of the fact that the Legislature has made no provision for appointments to new terms on the expiration of any terms of office during odd numbered years, members whose terms expire May 1, 1931, must, of necessity, under the provisions of this statute, hold over until May 1, 1932, at which time their successors should be appointed for a period of four years.

Considering now so-called deputy state supervisor and inspector counties, Section 4788, General Code, provides that boards of deputy state supervisors and inspectors of elections shall consist of four members. Section 4789, General Code, provides that two such members shall be appointed biennially to serve four years. You state there are some counties of this class in which appointments for the four year terms have been made in two consecutive years with the resultant three year interim before further appointments can be made. Without commenting upon the legality of such procedure, in view of Section 4789, requiring such appointments to be made biennially, it is apparent that, under these circumstances, in order to comply with the provisions of Section 4789-8, supra, as applicable to a given case, the following situation may arise:

If, for instance, two members were appointed in 1928 to serve for four years and two members were appointed in 1929 to serve for four years, there would be no appointments to make until 1932 when two members would be appointed to serve for four years to fill the vacancies occasioned by the expiration of the terms of those appointed in 1928. The two appointed in 1929 whose term of office would expire in 1933 would, accordingly, hold over until 1934.

I am advised that in one county of the state, two members of the board were appointed in 1925 to serve for four years and two were appointed in 1926 to serve for four years. The two members appointed in 1925, were reappointed in May, 1929, to serve for four years, their term expiring May 1, 1933. The terms of the two members appointed in 1926 will expire May 1, 1930, at which time, under the provisions of Section 4785-8, there will be appointed two members to serve until May 1, 1934. In view of the foregoing, in this particular county the two members who were appointed in 1929 and whose terms expire in 1933 will hold over until 1934, in which year the question may arise as to all four members of the board being then appointed. Section 4785-8 does not authorize the appointment of more than two members in any even numbered year. The situation should be called to the attention of the Legislature at the next session.

I am of the view that a provision authorizing the Secretary of State to make short term appointments might possibly have been wise. However, the language employed by the Legislature is plain and unambiguous, and under such circumstances, as a matter of law, I am unable to deduce therefrom an intent other than expressed.

This principle was well expressed by Mr. Justice Day in the opinion of the Supreme Court in *U. S. vs. Standard Brewery*, 251 U. S. at p. 217, as follows:

“Nothing is better settled than that in the construction of a law its meaning must be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it.”

Specifically answering your question, I am of the opinion that, under the pro-

visions of Section 4785-8, General Code, as enacted by the 88th General Assembly, effective January 1, 1930, members of boards of deputy state supervisors and inspectors of elections and deputy state supervisors of elections whose terms expire on May 1 of odd numbered years should continue to act and be recognized as such until May 1 of the next even numbered years, when their successors should be appointed by the Secretary of State as therein provided.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1343.

TOWNSHIP TRUSTEES—DUTY TO REMOVE SNOW OBSTRUCTING
 STATE, COUNTY AND TOWNSHIP ROADS.

SYLLABUS:

Section 7464, General Code, as amended by the 87th General Assembly (112 v. 496) does not repeal by implication Section 3374-1, General Code, and it is therefore the duty of the township trustees to keep state, county and township roads free from obstruction by snow.

COLUMBUS, OHIO, December 30, 1929.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication reading as follows:

“The trustees of Hopewell Township, Licking County, have requested information as to their duties with regard to the removal of snow from highways within the limits of the township other than township roads,—particularly county roads.

They have invited attention to Sec. 3374-1 of the General Code, which reads:

‘It shall be the duty of the township trustees to cause all the highways within the township, including the state, county and township roads, to be kept free from obstruction by snow. The cost and expense thereof shall be paid from the road funds of the township.’

At the time this section became a law, (107 p. 94) Sec. 7464 G. C. provided, under paragraph (b) that certain county roads should be maintained by the county commissioners. This section was amended, effective January 2, 1928, (112 v. 496).

Since Sec. 7464 charges the county commissioners with the maintenance of roads on the county highway system, the township trustees are inquiring whether Section 3374-1, in so far as it relates to county roads, is not by implication repealed.”

As suggested in your communication the question presented is whether or not the provisions of Section 7464, General Code, requiring the county commissioners to maintain a county highway system includes within the terms thereof the removing of “obstruction by snow”. Of course, if the provisions of Section 7464 are inconsistent with those of Section 3374-1, the latter will prevail because it is later in the order of enactment. However, repeals by implication are not favored under the