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TAX AND REVENUE COMMISSION—AMENDED SENATE BILL 414—DELINQUENT TAX COMMISSION—AMENDED SENATE BILL 420—MEMBERS APPOINTED BY VIRTUE OF MEMBERSHIP IN SENATE AND HOUSE OF REPRESENTATIVES—WHEN SUCH MEMBERSHIP CEASED.

SYLLABUS:

The members of the tax and revenue commission as established by Amended Senate Bill No. 414 of the 92nd General Assembly, Second Special Session, and the members of the delinquent tax commission as established by Amended Senate Bill No. 420 of the 92nd General Assembly, Second Special Session, who were appointed thereto by virtue of their membership in the Senate and House of Representatives, ceased to be members of those commissions at the same time that they ceased to be members of the Senate and House of Representatives.

COLUMBUS, OHIO, February 7, 1939.

HON. JOHN W. BRICKER, *Governor of Ohio, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date, which reads as follows:

“Amended Senate Bill No. 414 creating a Tax and Revenue Commission, provides that said Commission shall consist of fifteen members, five (5) members of the Senate appointed by the President of the Senate, and five (5) members of the House of Representatives, appointed by the Speaker, and others.

Amended Senate Bill No. 420, creating a Delinquent Tax Commission, provides that said Commission shall consist of nine members, three (3) to be members of the Senate and three (3) to be members of the House of Representatives, appointed by the President of the Senate and Speaker of the House of Representatives respectively.

Pursuant to this legislation and in each instance the commissions were created and members from the Senate and House of Representatives were appointed.

In several instances the persons who were originally appointed to membership on each of these commissions have ceased to be members of the body from which they were selected.

Specifically, the question presented is whether or not such persons are now members of such commissions since they have ceased to be members of the Legislature.

Your opinion will be appreciated."

Amended Senate Bill No. 414 of the 92nd General Assembly, Second Special Session, reads in part as follows:

"1. There is hereby created a tax and revenue commission, consisting of fifteen members as follows: five members of the State Senate appointed by the President, with the consent and approval of the Senate; five members of the House of Representatives appointed by the Speaker, with the consent and approval of the House; and five other members appointed by the Governor as follows: one county auditor of at least five years' tenure in office; and four resident citizens, not holding public office, who have had training and experience for effective service on such commission, and who are respectively qualified to represent the following activities and interests: agriculture, business, organized labor and real estate. All appointments to the commission shall be made within thirty days after this act takes effect. Vacancies on the commission shall be filled by the Governor from the same classifications as represented in the original appointment. The members of the commission shall serve without pay, but shall be reimbursed for their actual traveling and other expenses incurred in connection with the duties of the commission.

Within ten days after the date of appointment of members of said commission, the governor shall call a meeting of the commission, and at such meeting the commission shall organize by selecting a chairman and vice chairman, employ a secretary and such clerical and other assistance as shall be necessary, and adopt rules of procedure. The commission shall be empowered to employ and fix the compensation of a competent, trained and experienced tax authority to direct the investigation, and to employ such other investigators as shall be necessary in the investigation. The various departments of the state and local governments shall render every reasonable service in furthering the work of the tax and revenue commission, and shall make available to the commission all records requested by the commission. The commis-

sion shall proceed with all reasonable dispatch in the study of tax and revenue laws and procedure of Ohio and other comparable states, in the investigation of the forms of taxation and methods of levying and collecting taxes in operation in other comparable states, hold hearings at the state capitol or elsewhere in the state for the collection of data, determine upon the most equitable, just and productive forms of taxation suitable to Ohio, prepare a report with recommendation and submit the draft of such proposed legislation as is deemed necessary to carry into effect the commission's recommendations. The commission shall complete its work and submit its report, together with proposed legislation, to the governor and General Assembly on or before December 15, 1938."

Amended Senate Bill No. 420 of the 92nd General Assembly, Second Special Session, reads in part as follows:

"1. A commission is hereby created for the purpose of making a study and survey of the delinquent tax situation in the state of Ohio. This commission shall be known as the delinquent tax commission of Ohio and shall consist of nine members, three to be members of the Senate, to be appointed by the president of the Senate, three to be members of the House of Representatives, to be appointed by the Speaker of the House of Representatives, and three to be county officials, one of whom shall be a county prosecuting attorney, one a county auditor, and one a county treasurer, to be appointed by the governor. This commission shall serve without pay, but shall be allowed their actual expenses incurred in the performance of their duties. The commission shall meet and organize at the earliest practicable date, not to exceed thirty days following the taking effect of this act, and elect a chairman, vice-chairman and secretary. This commission shall make such rules and regulations as may be required for the carrying out of the provisions of this act, and shall be empowered to subpoena such witnesses, and records as may be necessary. The commission shall be empowered to employ such stenographers and clerical assistance as may be required.

2. This commission shall make a careful and thorough study and survey of the delinquent tax situation in this state, with a view to making specific recommendations for means and methods whereby the major portion of such taxes and assessments now delinquent in the state of Ohio, may be speedily liquidated. The purpose of the commission shall include the following:

(a) To study the causes for the present delinquency in

general taxes, assessments, personal property taxes, intangible taxes and all other excise taxes.

(b) To study abuses in the assessment privileges of municipalities, counties, and other political subdivisions.

(c) To prepare and recommend legislation which will secure the prompt liquidation of present lawfully levied general taxes and assessments, and to prevent the future accumulation of delinquent taxes and assessments of any of the above classifications in this state.

The commission shall be required to make its report and recommendations to an adjourned session or a special session of the Ninety-second General Assembly if possible, otherwise to the Ninety-third General Assembly not later than December 31, 1939."

The wording of these two sections with regard to the personnel of the two commissions, while not identical, is so related that the answer to your questions will be the same for both commissions and the following discussion will apply with equal force to the personnel of each commission.

In connection with Amended Senate Bill No. 414, your attention is directed to the last sentence of Section 1 thereof, which reads:

"The commission shall complete its work and submit its report, together with proposed legislation, to the governor and General Assembly on or before December 15, 1938."

Your attention is also directed to a similar provision contained in Amended Senate Bill No. 420, which reads as follows:

"The commission shall be required to make its report and recommendations to an adjourned session or a special session of the ninety-second General Assembly if possible, otherwise to the Ninety-third General Assembly not later than December 31, 1939."

In the construction of statutes where the Legislature has failed to definitely express itself on any particular point, its intent may frequently be ascertained from a consideration of the entire section. An analysis of Amended Senate Bill No. 414 shows that the Legislature felt that material improvement might be made in the tax and revenue situation of Ohio. Any such change, however, would warrant careful consideration. Provision was made for a very complete study of the situation in Ohio and the tax systems of other states. Particular attention was directed to the personnel of the commission which was to have included in its member-

ship five members of the Senate and five members of the House of Representatives. By reason of this representation each branch of the General Assembly would have members thoroughly familiar with the entire work of the commission, in sympathy with its views and recommendations and able to render valuable assistance to both the Senate and House.

Upon completion of their terms in office, however, such Senate and House members of the Commission automatically lost their votes in those respective bodies. For them to continue as commission members would of itself defeat the very purpose and obvious intent of the Legislature when it provided that two-thirds of the membership of each commission should be made up of members of the General Assembly.

The same conclusion was reached in an opinion of a former Attorney General as reported in Opinions of the Attorney General for 1917, Volume I, page 5, wherein it was stated at page 7:

“From this it is evident that this board is to have a certain complexion; that there is a limitation upon the membership of the board; that it was the intention of the Legislature that two members of the board should be members of the House of Representatives, two should be members of the Senate and two should be members of the Ohio board of administration. Or in other words, the board of public buildings must from time to time be composed of the adjutant general ex officio, two members from each house of the General Assembly and two members from the Ohio board of administration.

Hence, it is my opinion, if a member of the board of public buildings ceases to be a member of the General Assembly or of the Ohio board of administration, due to the expiration of his term, removal or resignation, that he at the same time ceases to be a member of the board of public buildings, this for the reason that he no longer has the qualifications for membership on said board.”

It is, therefore, my opinion that such members of the tax and revenue commission and the delinquent tax commission as were appointed thereto by reason of their membership in the Legislature, have lost their memberships on these commissions when they ceased to be members of the Legislature.

Respectfully,

THOMAS J. HERBERT,
Attorney General.