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1. NOTICE — OHIO BOARD OF BUILDING STANDARDS — DECISION TO ADOPT A RULE, REGULATION, AMENDMENT OR ANNULMENT — BOARD MUST COMPLY WITH PROVISIONS, SECTION 3781.12 RC — NOTICE OF PUBLIC HEARING — MUST STATE FULL PROPOSED RULE OR REGULATION TO BE ADOPTED, AMENDED OR ANNULLED OR PROPOSED AMENDMENT — SECTION 119.03 RC CONTROLS QUESTION, WHAT CONSTITUTES PROPER LEGAL NOTICE.
2. EFFECTIVE DATE OF AMENDMENT OR ANNULMENT OF RULE OR REGULATION ADOPTED BY BOARD MAY NOT BE EARLIER THAN NINETY DAYS AFTER NOTICE FILED WITH SECRETARY OF STATE — EFFECTIVE DATE OF NEW RULE OR REGULATION ADOPTED BY BOARD MAY NOT BE EARLIER THAN TEN DAYS AFTER INSTRUMENT FILED WITH SECRETARY OF STATE.

SYLLABUS:

1. Where the Ohio Board of Building Standards deems it advisable to adopt a rule or regulation or amendment or annulment thereof, pursuant to Section 3781.12, Revised Code, the board must comply with the provision found in Section 3781.12, Revised Code, to the effect that the notice of public hearing thereon must state in full the proposed rule or regulation to be adopted, amended or annulled, or the proposed amendment, since that section and not Section 119.03, Revised Code, controls the question of what constitutes proper legal notice.

2. The effective date of an *amendment* or *annulment* of a rule or regulation adopted by the Ohio Board of Building Standards pursuant to Section 3781.12, Revised Code, may not be earlier than ninety days after the same is filed with the Secretary of State; and the effective date of a new rule or regulation adopted by the Board of Building Standards pursuant to Section 3781.12, Revised Code, may not be earlier than ten days after the same is filed with the Secretary of State.

Columbus, Ohio, February 1, 1956

Hon. Margaret A. Mahoney, Director, Department of Industrial Relations
Columbus, Ohio

Dear Miss Mahoney :

I have before me your request for my opinion which reads as follows :

“At the request of the Ohio Board of Building Standards, I am presenting this problem for your consideration and advice:

“The Board, in exercising its rule making powers, has found applicable provisions setting forth requirements for advertising public hearings and also setting of the effective date of rules, in both Chapter 119 and 3781 of the Revised Code.

“The particular items of conflict noted by the Board and called to your attention are: (1) Under section 3781.12 of the Revised Code, if the Board deems it advisable to adopt a rule or regulation or amendment or annulment thereof, when petitioned to do so shall hold a public hearing which must be advertised by thirty days’ notice in at least five newspapers published in different counties and of general circulation in the state, which notice shall state *in full* the proposed rule or regulation to be adopted, amended, or annulled. (2) In case of amendment or annulment, the effective date may not be earlier than *ninety days* after the same is filed with the Secretary of State.

“Section 119.03 of the Revised Code provides that: (1) In the adoption, amendment, or rescission of any rule an agency shall give reasonable public notice prior to the hearing which notice shall include a *synopsis* of the proposed rule or amendment, or rule to be rescinded or a *general statement* of the subject matter to which such proposed rule relates. (2) After complying with Divisions (A), (B), and (C) of Section 119.03 of the Revised Code, the agency may issue an order adopting the proposed rule and shall designate the effective date thereof which shall not be earlier than the *tenth day* after said rule has been filed with the Secretary of State.

“The Board of Building Standards thus finds that in exercising its authority to adopt rules and regulations it should comply with Chapter 119 of the Revised Code but the Board also finds that it should comply with requirements of Chapter 3781. Chapter 119 of the Revised Code is more complete and definite in setting forth procedural requirements and has been followed by the Board, but the Board does not know if the requirements of Chapter 119 govern the Board’s actions to the exclusion of requirements on the same point of procedure prescribed in Chapter 3781, or only in the absence of requirements on the same point of procedure prescribed in Chapter 3781 of the Revised Code.

“Section 119.11 of the Revised Code provides for an appeal from an order of an agency in adopting, amending, or rescinding a rule, on the ground that said agency failed to comply with the law in adopting, amending, rescinding, publishing, or distributing said rule. We have no question on the requirements for distribution of rules. However, we request your opinion on the following

question: If the Board of Building Standards complies with the provisions of section 119.03 of the Revised Code pertaining to the adoption, amendment, or rescission of any rule and the issuing of an order adopting such proposed rule, amendment or rescission thereof, consistent with the public notice and designating the effective date thereof, specifically giving notice of hearing by advertising a synopsis or general statement of the material to be considered and designating an effective date to be not less than the tenth day after the filing with the Secretary of State, has reasonable public notice been given and has the Board of Building Standards complied with the law in adopting, amending, rescinding, or publishing said rule?"

Your letter of request presents two questions, each of which must be resolved by construing the provisions of Section 3781.12, Revised Code, alongside the provisions of Section 119.03, Revised Code. The first mentioned statute relates to the procedure prescribed to be followed by the board of building standards in the adoption of rules or regulations, and the other section relates to the procedure prescribed to be followed by an "administrative agency" in the adoption of rules.

The first question is concerned with *which* statute applies with respect to the publication of notice of hearing on a rule or regulation proposed to be adopted by the board of building standards, and the second question is concerned with *which* statute applies with respect to the earliest effective date of a rule or regulation adopted by the board subsequent to a public hearing.

Considering first the problem of proper procedure to be followed in publishing notice of a hearing, I find the material portion of Section 3781.12, Revised Code, to read:

"Any person may petition the board of building standards to adopt, amend, or annul a rule or regulation pursuant to section 3781.10 of the Revised Code, or to permit the use of any particular fixture, device, material, system, or method or manner of construction or installation as the equivalent, as regards the purposes declared in section 3781.06 of the Revised Code, of the fixtures, devices, materials, systems, or methods or manners of construction of installation described in any section of the Revised Code relating to said purposes, where the use of such equivalent is permitted by law. *If the board, after hearing, deems it advisable to adopt the rule or regulation or amendment thereof, or to permit the equivalency, petitioned for, it shall give at least thirty days' notice of the time and place of a public hearing thereon, which notice shall state in full the proposed rule or regulation to be*

*adopted, amended, or annulled, or the proposed amendment, and shall be advertised in at least five newspapers published in different counties and of general circulation in the state. * * **
(Emphasis added.)

As has already been observed in your request, this statute requires the giving of a notice of hearing which notice shall state "in full" the proposed rule or regulation to be adopted, amended, or annulled. The provision requiring a full text of the rule to be published, was enacted in 1923. See 110 Ohio Laws, 350, 353.

The essential provisions of the Administrative Procedure Act regarding rule-making were enacted in 1945. See 121 Ohio Laws, 578. Hence, the provisions previously noted relative to the board of building standards, antedate by some twenty years the provisions of the Administrative Procedure Act, Chapter 119, Revised Code.

Section 119.01 (A), Revised Code, the definition section of the Administrative Procedure Act, clearly would include within the scope of the act a board having authority to promulgate rules in the department of industrial relations.

Section 119.03, Revised Code, provides in material part as follows:

"In the adoption, amendment, or rescission of any rule an agency shall comply with the following procedure:

"(A) *Reasonable public notice shall be given* at least thirty days prior to the date set for a hearing, in such manner and form and for such length of time as the agency determines *and shall include: * * **

"(2) *A synopsis of the proposed rule, amendment, or rule to be rescinded or a general statement of the subject matter to which such proposed rule relates; * * **" (Emphasis added)

The Administrative Procedure Act, therefore, provides that an administrative agency, in giving public notice of a hearing shall include in that notice *a synopsis* of the rule proposed to be adopted or amended.

Section 119.03, Revised Code, further provides that the *full text* of the proposed rule, amendment, or rule to be rescinded shall be filed *with the secretary of state* at least thirty days prior to the date set for the hearing. This requirement is in addition to the *public notice* requirement of setting forth a synopsis of the rule. The synopsis would appear in the newspapers. The full text would be filed with the Secretary of State.

In construing the provisions of Section 3781.12, Revised Code, alongside the provisions of Section 119.03, Revised Code, it is readily apparent that it is possible for the board of building standards, in giving public notice of a rule hearing, to comply with *both* statutes, i. e., it could arrange for the *full text* of the proposed rule *and a synopsis* thereof to be published in five newspapers.

The fundamental question raised, however, is whether compliance with Section 119.03, Revised Code, alone, by publishing only a synopsis of the proposed rule, is sufficient under the law of this state.

Section 119.02, Revised Code, provides in material part :

“* * * *Unless otherwise specifically provided by law*, the failure of any agency to comply with such procedure shall invalidate any rule or amendment adopted, or the rescission of any rule.”
(Emphasis added.)

The foregoing statute is a clear legislative pronouncement that *other laws* containing express procedural provisions or requirements contrary to those found in the Administrative Procedure Act, are to govern the actions of an administrative agency, which agency, but for the special law or provision, would be governed in its actions by Chapter 119, Revised Code. Thus, the Administrative Procedure Act was intended to harmonize with, not to supersede, provisions dealing more *specifically* with a particular phase of procedural law which now is treated in a general way under the Administrative Procedure Act.

It is a well settled rule of construction that *special* statutory provisions for *particular* cases operate as exceptions to general provisions which might otherwise include the particular cases, and such cases are governed by the special provisions. See *State, ex rel. Elliott Co. v. Connor, Supt. of Public Works*, 123 Ohio St., 310. See also 37 Ohio Jurisprudence, page 409. This is true even where the general provision was enacted after the special provision. In *Commissioners v. Board of Public Works*, 39 Ohio St., 628, the principle is stated in the Syllabus as follows :

“* * * 4. A local and special act is not repealed or otherwise affected by the conflicting provisions of a subsequent general statute on the same subject, unless the legislative intent that such effect be given the later enactment is clearly manifest.”

The provisions of Section 3781.12, Revised Code, detail the procedure to be followed by the board of building standards in adopting a

rule or regulation petitioned for, permitting the use of any particular fixture, material, etc., as the equivalent of fixtures, materials, etc., described in the Revised Code.

Section 3781.13, Revised Code, permits any interested party affected by a rule or regulation described in Section 3781.12, Revised Code, to petition the board of building standards for a hearing.

Section 3781.14, Revised Code, allows any person in interest mentioned in Section 3781.13, Revised Code, who is dissatisfied with any action of the board of building standards adopted and confirmed by the board as provided in the last mentioned section, to commence an action in the court of common pleas of Franklin County against the board as defendant to set aside the adopted provision on the ground that it is unreasonable or unlawful. The common pleas court is vested with *exclusive* jurisdiction to hear and determine such action.

It is readily observed, therefore, that chapter 3781, Revised Code, provides in a rather complete manner for the procedure to be followed under the facts presented. This is so even to the extent of providing for what is tantamount to an appeal from the rule or regulation adopted by the board.

Chapter 119, Revised Code, applies to rules or regulations adopted by administrative agencies, but it does not apply where there is already a statute dealing with the same subject matter as it relates to a *particular* agency. The Administrative Procedure Act does not apply to *every* action taken by *every* administrative agency. It applies only in so far as it is capable of being applied or intended to be applied. The Administrative Procedure Act serves the very useful purpose of establishing procedural safeguards for the protection of those dealing with or affected by the actions of administrative agencies. In a sense, it provides the *minimum* standards to be followed by agencies in general. Its provisions must necessarily give way to provisions found elsewhere in the code, which provisions were deliberately designed to cover the procedural actions of a particular agency.

I am not unmindful of Section 3781.101, Revised Code, which was enacted by the 101st General Assembly, and which provides in material part as follows:

“The provisions of sections 119.03 and 119.11 of the Revised Code, in particular, and the applicable provisions of Chapter 119

*of the Revised Code in general, shall govern the proceedings of the board of building standards in adopting, amending, or rescinding rules and regulations pursuant to section 3781.10 of the Revised Code, and the proceedings under sections 3781.12, 3781.13 and 3781.14 of the Revised Code, in addition to the procedural provisions of such sections. * * ** (Emphasis added.)

This statute, in my opinion, does not detract from the conclusion already reached, that the *full text* of the proposed rule must be published. Nor does it *require* the board to publish a synopsis of the proposed rule in addition to the publication of the full text. Section 3781.101, Revised Code, merely makes it clear that the Administrative Procedure Act is to govern the actions of the board, in so far as it is capable of being applied to those actions. Publication of the full text of a proposed rule would appear to obviate the necessity of publishing a synopsis or a general statement of the proposed rule, since the board, in publishing the full text as required by law, exceeds the minimum requirement of publishing a mere synopsis.

Your other question readies itself for the same reasoning and answer. Section 3781.12, Revised Code, provides that in case of amendment or annulment of a rule, the effective date may not be earlier than *ninety days* after the same is filed with the Secretary of State. Section 119.03 (D), Revised Code, provides that after complying with divisions (A), (B), and (C) of that section, the agency may issue an order adopting such rule and at that time shall designate the effective date thereof "which shall not be earlier than the *tenth day*" after said rule has been filed in its final form with the Secretary of State.

What I have said earlier in this opinion also controls the answer to this problem. The effective date of an *amendment* or *annulment* of a rule or regulation may not be earlier than *ninety days* after it is filed with the Secretary of State. The provision in the board of building standards section, being peculiarly and specially applicable to the rules and regulations of the board, govern the effective date of an amendment or annulment of a rule.

It should be noted, however, that where the board has adopted a *new* rule or regulation, as distinguished from an *amendment* or *annulment* of a rule or regulation already in force, Section 3781.12, Revised Code, does not make specific provision for an earliest effective date. Hence, the provision in Section 119.03 (D), Revised Code, would control the question,

and the board could not designate an effective date earlier than the *tenth* day after said rule has been filed in its final form with the Secretary of State.

Accordingly, it is my opinion that :

1. Where the Ohio Board of Building Standards deems it advisable to adopt a rule or regulation or amendment or annulment thereof, pursuant to Section 3781.12, Revised Code, the board must comply with the provision found in Section 3781.12, Revised Code, to the effect that the notice of public hearing thereon must state in full the proposed rule or regulation to be adopted, amended or annulled, or the proposed amendment, since that section and not Section 119.03, Revised Code, controls the question of what constitutes proper legal notice.

2. The effective date of an *amendment* or *annulment* of a rule or regulation adopted by the Ohio Board of Building Standards pursuant to Section 3781.12, Revised Code, may not be earlier than ninety days after the same is filed with the Secretary of State; and the effective date of a new rule or regulation adopted by the Board of Building Standards pursuant to Section 3781.12, Revised Code, may not be earlier than ten days after the same is filed with the Secretary of State.

Respectfully,

C. WILLIAM O'NEILL

Attorney General