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OHIO DEVELOPMENT AND PUBLICITY COMMISSION—  
ABOLISHED AND TERMS OF MEMBERS ABROGATED—Am.  
S. B. 387, 102nd GENERAL ASSEMBLY—MEMBERS OF THAT  
COMMISSION CANNOT AUTOMATICALLY SUCCEED TO  
MEMBERSHIP UPON OHIO ECONOMIC DEVELOPMENT AND  
PUBLICITY COMMISSION.

## SYLLABUS:

The Ohio Development and Publicity Commission has been abolished and the terms of its members abrogated by the provisions of Amended Senate Bill No. 387, One Hundred Second General Assembly, and the members of that Commission cannot automatically succeed to membership upon the Ohio Economic Development and Publicity Commission.

Columbus, Ohio, September 17, 1957

Hon. Prentiss Mooney, Executive Secretary  
Ohio Development and Publicity Commission  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“It would be much appreciated if your office will render an opinion on a matter concerning the personnel of the Ohio Development and Publicity Commission.

“Specifically we would like to know if the present members of the Ohio Development and Publicity Commission, who are legally serving terms on the Commission, automatically become members of the Economic Development and Publicity Commis-

sion, which comes into legal being on September 17, 1957. In other words, our question is: Do the terms of the present members of the Development and Publicity Commission hold over into the new Economic Development and Publicity Commission?"

Amended Senate Bill No. 387, One Hundred and Second General Assembly, effective September 17, 1957, substantially changes that portion of the Revised Code relating to the Ohio Development and Publicity Commission. All of the powers and duties formerly exercised by that Commission are by this act transferred to the Division of Economic Development and Publicity in the Department of Commerce. Such is the effect of the repeal of the first paragraph of Section 105.12, Revised Code, and the enactment of new Section 105.09, Revised Code.

The former Section 105.11, Revised Code, read as follows:

"There is hereby created a board of six members to be known as the 'Ohio development and publicity commission.' The commission shall be nonpartisan and shall consist of six citizens of the state.

"The members of the commission are to be appointed by the governor and approved by the senate. The governor shall serve ex officio, and the terms of the other members of the commission shall be six years each. Any vacancy in the commission shall be filled in the same manner.

"There shall be an advisory board composed of the following members, whose duties shall be to meet, confer, and co-operate with the commission in the furtherance of its purposes; one representative of the department of commerce; one representative of the department of agriculture; one representative of the department of natural resources; one representative of the department of education; one representative of the department of highways; and one representative of the Ohio archaeological and historical society."

The new section 105.11, Revised Code, reads:

"There is hereby created a board of six members to be known as the 'Ohio economic development and publicity commission.' The commission shall be nonpartisan and shall consist of six citizens of the state.

"The members of the commission are to be appointed by the governor and approved by the senate. The terms of the members of the commission shall be six years each. Any vacancy in the commission shall be filled in the same manner.

“The commission shall serve as an advisory council to the division of economic development and publicity in the department of commerce. The commission shall hold regular meetings at such times and places as it fixes and shall meet at any time on call of the director of commerce.”

The answer to your question depends on whether the Ohio Economic Development and Publicity Commission is (1) the Ohio Development and Publicity Commission continued with a new name and new functions or (2) an entirely new body.

This in turn depends on whether the old Section 105.11, Revised Code, has been repealed and the Ohio Development and Publicity Commission abolished.

It appears to me that the effect of Amended Senate Bill No. 387 has been to abolish the old Commission and to create a new body, separate and independent from the old.

In the case of State *ex rel* Taylor v. Cowen, 96 Ohio St., 277 (1917), the Supreme Court had for consideration a situation somewhat similar to that involved here. The first paragraph of the syllabus of that case reads:

“Where, in the codification and reenactment of the state highway laws, the legislature, though expressly repealing the existing highway laws, has at the time of such repeal substantially reenacted former sections of the existing highway law relating to the state highway department and to the state highway commissioner, and has not expressly abolished the latter office but continued the same in force with the same title, tenure and salary, *and with substantially the same functions* which it theretofore possessed, such office will not be considered as having been abolished by such repeal, but as continuing and undisturbed.”

(Emphasis added.)

Further, there is in Ohio a principle of statutory construction enunciated in the following language, being the first paragraph of the syllabus of the case *In re Harry Allen*, 91 Ohio St., 315 (1915):

“Where there is reenacted in an amendatory act provisions of the original statute in *the same or substantially the same language* and the original statute is repealed in compliance with Section 16, Article II of the Constitution, such provisions will not be considered as repealed and again reenacted, but will be regarded as having been continuous and undisturbed by the amendatory act.”

(Emphasis added.)

Therefore, if in Amended Senate Bill No. 387 the General Assembly had re-enacted substantially the same language of Section 105.11, Revised Code, and had continued in the new Commission substantially the same functions as those of the old Commission, then I would be impelled to the opinion that the Ohio Development and Publicity Commission had not been abolished and that the new Commission is only a continuation of that Commission under a new name.

However, the identity of an office is to be determined by the functions that belong to it. *Kirker v. Cincinnati*, 48 Ohio St., 507 (1891.) And when the functions of an office are abolished, the office is abolished. *State ex rel. Rose v. Donahey*, 100 Ohio St., 104 (1919). By reasonable analogy when the functions of an office are transferred elsewhere, the office is abolished.

Amended Senate Bill No. 387 does not re-enact in substantially the same terms the former Section 105.11, Revised Code. Not only the name *but also the composition* of the Commission created by the new statute differ from those of the Commission created by the old statute. The repeal and re-enactment of Section 105.11, Revised Code, were not merely *pro forma* under the doctrine of *In re Allen*, *supra*. Section 105.11, Revised Code, was repealed, and the Ohio Development and Publicity Commission was abolished by Amended Senate Bill No. 387.

What has been said about the functions of an office strengthens this conclusion. The duties of the old Commission are transferred elsewhere by Amended Senate Bill No. 387. The new Commission has none of the functions of the old Commission but has instead advisory functions the old Commission did not have. It is, of course, true that to abolish an office there must be clear intent to abolish it, and the transfer of all of the functions of the Ohio Publicity and Development Commission to another governmental body seems sufficient evidence of that clear intention.

Amended House Bill No. 387 also created a new commission, the Ohio Economic Development and Publicity Commission. Whereas the old Commission had seven members, six regular members plus the Governor sitting *ex officio*, the new Commission has six members only. The new Commission has none of the functions of the old and has besides new functions the old Commission did not have.

In short, it is my opinion that the Ohio Development and Publicity

Commission has been abolished, and such being the case the terms of its members have been abrogated.

The Act does not imply that the members of the old Commission should succeed to membership on the new Commission, and even the possibility of such an implication is denied by the fact that such a statutory provision would amount to appointment by the legislature in violation of Section 27 of Article II of the Constitution of Ohio.

It is my opinion, and you are advised, that the Ohio Development and Publicity Commission has been abolished and the terms of its members abrogated by the provisions of Amended Senate Bill No. 387, One Hundred and Second General Assembly, and the members of that Commission cannot automatically succeed to membership upon the Ohio Economic Development and Publicity Commission.

Respectfully,

WILLIAM SAXBE

Attorney General