

division where he finds that the same has changed in value, or is not on the duplicate at its true value in money, and in such case he shall determine the true value thereof in money, as herein provided for assessing the entire property in any such subdivision. In such case the county auditor shall notify the owner of such real estate, or the person in whose name the same stands charged on the duplicate of his intention to reassess such real estate and of the change in valuation thereof in such reassessment, and in case the owner of such real estate is not satisfied with such reassessment, the same shall be heard at the next ensuing session of the county board of revision, and such owner shall have the right to appeal therefrom to the tax commission of Ohio as provided in other cases."

This section contains a reference to a complaint filed with the board of revision, but in view of the broad language of section 5609 this provision of section 5548-1 is merely cumulative. That is to say, under section 5609 the complaint may be filed against any valuation appearing on the tax duplicate of the then current year, whether that valuation is the product of a reassessment of the real estate under section 5548 or under section 5548-1 or not. The only effect of the making of an initial reappraisalment under section 5548 of the General Code is to authorize the auditor, without the intervention of the county commissioners or the tax commission, to revalue and reassess the real property in any subdivision covered by the previous reappraisalment whenever he is of the opinion that such a reassessment is necessary. The procedure in respect of complaints is in nowise affected by such a reappraisalment.

In addition to all these considerations, it must be pointed out that in case the board of revision increases the valuations complained of, section 5599 of the General Code must be complied with by notifying the owner as therein prescribed; while the board is positively prohibited from decreasing valuations "unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by oath showing the facts" (Section 5601 G. C.). In case complaint is made by a public officer, therefore, looking toward a decrease in valuation which is to be more or less uniform throughout the district, no action could be taken by the board unless the complaint so filed by the public officer, or officers, were supported, before action by the board, by affidavits of each owner. In the opinion of this department, it is the owner who is "the party affected" within the meaning of section 5601.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2503.

COUNTY COMMISSIONERS—AUTHORITY OF BOARD OF COUNTY COMMISSIONERS TO ELECT ONE OF THEIR MEMBERS AS PRESIDENT—LIMITED TO CERTAIN YEARS—SEE SECTION 2400 G. C.

If on the third Monday of September of any year, when the board of county commissioners organizes under section 2400 G. C., there is then on such board a commissioner whose term first expires, such commissioner shall be president of the

board, and the members thereof are without authority in such a case to elect any other member as president.

COLUMBUS, OHIO, October 24, 1921.

HON. R. B. PUTNAM, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter in which you say:

“I desire your opinion upon the following proposition: Last fall three men, A, B, and C, were elected county commissioners of Holmes county, Ohio. A and B received the highest number of votes and C the lowest number of votes. On the third Monday of September, 1921, the new board met and organized as follows: C, the low man, nominated A, the high man, to be president of the board. Motion was seconded by B, and A was unanimously elected as president of the board.”

You cite sections 2395 G. C. and 2400 G. C. The first section as recently amended (H. B. 16, 108 O. L. Part II, page 1300) says:

“The board of county commissioners shall consist of three persons who shall be elected as follows: In the year 1920 three county commissioners shall be elected in each county. The two persons who receive the greatest number of votes shall hold their office from the third Monday of September, 1921, until the first Monday of January, 1925. The third one elected in 1920 shall hold office from the third Monday of September, 1921, to the first Monday of January, 1923. In November, 1922, and quadrennially thereafter, one commissioner shall be elected to take office on the first Monday of January following. In November, 1924, and quadrennially thereafter two commissioners shall be elected to take office on the first Monday of January following. Thereafter such officers shall hold office for the term of four years and until their successors are elected and qualified.”

Section 2400 G. C. says:

“The board of county commissioners shall organize on the third Monday of September of each year. *The commissioner whose term first expires shall be president of the board and shall preside at all regular and special sessions thereof.* If the position of president becomes vacant during the year, the board shall select one of its members to preside.”

You then ask:

“Is the provision of section 2400 G. C., which requires the short term man to be president of the board, mandatory? Under the state of affairs as outlined in the first paragraph hereof, could not the short term man waive the provisions of the statute and consent for the longer termed man to be president of the board?”

Preliminary to answering your question, it may be observed that it is a matter of some importance to know who is the president of the board of county commissioners. This is so not only for reasons which affect the board itself and its proceedings, but also because of the relation which the president of the board of county commissioners sustains to other governmental agen-

cies. For example, such officer is, by reason of section 5580 G. C., a member of the "county board of revision"—a board established to hear complaints arising in connection with the taxation of property.

Your question, it is noted, is whether that part of section 2400 G. C. which says

"The commissioner whose term first expires shall be president of the board and shall preside at all regular and special sessions thereof"

is *mandatory*, or *directory* merely. If this provision is in effect at all, we have no doubt that it is mandatory. The provision employs the word "shall," which in its ordinary signification is a mandatory word; and there is nothing in the context to show an intent to give the word any but its natural and usual meaning.

"* * * 'shall' and 'must' are words of command. Taken in their usual and proper meaning, they leave no room for choice or discretion, but are imperative; and they will be presumed to have been used in this sense, unless something in the character of the statute or the subject to which it relates, or in the context, shows that this could not have been the intention of the legislature."

Black on Interpretation of Laws (2nd Ed.) p. 531.

Nor, if the provision of section 2400 G. C. in question be effective, do we think it can be waived. It is a statutory designation as to who shall fill a certain place. It is not in the nature of a private benefit, and there is nothing to *wave*.

Of greater difficulty is the question whether that part of section 2400 G. C. above quoted is in effect *at all* or not.

Said provision first made its appearance in our statutes in an act found in 89 O. L. 220, at which time the personnel of the board of county commissioners was governed by an act found in 83 O. L. 198, providing that

"the board of county commissioners consists of three persons, *one of whom shall be chosen every year*, and shall hold his office for three years, commencing on the first Monday in January next after his election."

Obviously, the act in 89 O. L. 220 was perfectly consistent with that found in 83 O. L. 198.

In 98 O. L. 272, however, a different policy as to choosing commissioners was established, the act therein found providing that

"The board of county commissioners shall consist of three persons, *to be elected biennially, who shall hold their office for two years* commencing on the first day of December next after their election."

Under the statute just cited, the terms of office of all three commissioners were concurrent, and of no term could it be said that it *first* expired.

The act of 98 O. L. 272 (carried into the code as section 2395 G. C.), while it did not *expressly* repeal any part of the act found in 89 O. L. 220 (carried into the code as section 2400 G. C.), by implication *did* repeal that portion of the latter act which said

"* * * the commissioner whose term first expires shall be the president of the board * * *"

for this last provision was entirely inconsistent with a scheme of things that provided for *no* commissioner whose term *first* expired.

So, for a period of fifteen years, namely from 1906 when 98 O. L. 272 was passed until "organization day" of 1921, the provision in what is now section 2400 G. C., viz. "the commissioner whose term first expires shall be the president of the board," was of no legal force, because there was nothing in section 2395 G. C. which it could apply to.

In 1920, however, section 2395 G. C. was, as noted above, amended, and it was amended in such a way as to make it possible for there to be, on "organization day" 1921 (to-wit the third Monday of September, 1921) a member of the board of county commissioners whose term *did* first expire, namely the member who received the lowest number of votes at the 1920 election.

Now, the question arises whether the provision in section 2400 G. C.,

"the commissioner whose term first expires shall be the president of the board"

which was, as we believe, repealed by implication in 1906 (when the act found in 98 O. L. 272 was passed), could be regarded as reviving and as being in full force and effect on the third Monday of September, 1921, when under amended section 2395 G. C. the commissioners proceeded to organize.

The answer to this question depends upon the nature of a repeal by implication. Is it an *out and out* repeal, or only a repeal *pendente*? That is, does a repeal by implication completely extinguish the repealed statute, or only indefinitely suspend the effect and force of that statute?

Certainly the rule is no stronger as to implied repeals than as to express repeals. Of the latter, this is said in Sutherland on Statutory Construction (Second Ed. Lewis, Vol. I, page 544):

"A repealed law is indefinitely suspended while the repealing statute is in force. When that statute is repealed its repealing force is spent, and the one which is repealed thereupon comes again into operation. This revival would not ensue if the repeal had the effect of absolute extinguishment."

Of course, as to express repeals the provision of the constitution of Ohio is to be borne in mind which says:

"* * * no law shall be revived * * * unless the new act contains the entire act revived * * *" (Art. II, Sec. 16)

but this constitutional provision has been held inapplicable to the rule as to repeals by implication. *Lehman vs. McBride*, 15 O. S. 573.

When it is remembered that a statute is said to be repealed by implication because it is *inconsistent* with another statute, it seems unreasonable to suppose that the repeal should endure for any longer period than the inconsistency does. Otherwise, the doctrine of repeal by implication, instead of facilitating the discovery of the legislative intent, would impede it.

We are therefore led to believe that the amendment of section 2395 G. C. and the repeal of the original section bearing that number—in other words the enactment of H. B. 16, 108 O. L. Part II, p. 1300, set forth at the outset of this opinion—had the effect of bringing back into force and effect the provision of section 2400 G. C. that

"The commissioner whose term first expires shall be president of the board and shall preside at all regular and special sessions thereof"

unless the circumstance mentioned in the next paragraph had the effect to prevent such revival.

The circumstance alluded to is this: that the schedule set up in section 2395 G. C. for the election of county commissioners is such, that the provision of section 2400 G. C. in question can at most have only what might be called an *intermittent* operation. The schedule referred to may now be considered in some detail.

In the year 1920 three county commissioners were elected in each county. The terms of two—the two receiving the greatest number of votes—are fixed by section 2395 G. C. to begin on the third Monday of September, 1921, and to extend to the first Monday of January, 1925, while the term of the third one, the “low man,” begins on the third Monday of September, 1921, and extends only to the first Monday of January, 1923. Thus the situation on “organization day” of the year 1921 is that there is a “commissioner whose term first expires,” which would make it possible for the provision of section 2400 G. C. under consideration to apply.

On “organization day” of the year 1922, the situation will be the same, viz., two commissioners with long terms and one with a short term, and it is again possible for the provision of section 2400 G. C. to operate.

On “organization day” of the year 1923, the situation will be a different one. At that time the personnel of the board will be made up of *one* member who was elected at the November, 1922, election for a term of four years, commencing on the first Monday of January, 1923, and extending to the first Monday of January, 1927, and two members who were elected at the November, 1920, election and whose terms extend to the first Monday of January, 1925. In other words, on “organization day” of the year 1923, it is not possible to refer to “*the* commissioner whose term *first* expires,” because there are then in office *two* commissioners whose terms expire the same day.

On “organization day” of the year 1924, the situation will be the same as on the corresponding day of the year 1923; there will be a commissioner whose term extends to the first Monday of January, 1927, and two commissioners whose terms extend to the first Monday of the following January, to-wit, January, 1925.

On “organization day” of the year 1925, however, it will again be possible for the provision in section 2400 G. C. to apply. At that time the board of county commissioners will consist of two members elected in November, 1924, who take office on the first Monday of January, 1925, and who each hold office until the first Monday of January, 1929; and of *one* member who was elected in November of 1922, whose term began on the first Monday of January, 1923, and extended to the first Monday of January, 1927. In other words, there will, on the third Monday of September, 1925, be a commissioner whose term *first* expires.

On “organization day” of the year 1926 it will again be possible for the provision in section 2400 G. C. to apply. At that time the board will consist of one member whose term extends to the first Monday of January, 1927, and of two members whose terms extend to the first Monday of January, 1929.

On “organization day” of the year 1927, the board will be composed of one member who was elected in November, 1926, who took office the first Monday in January, 1927, and whose term is until the first Monday of January, 1931; and of two members whose terms extend to the first Monday of January, 1929. Thus, on said date (third Monday of September, 1927), there will be no *commissioner* whose term first expires, and therefore the provision in section 2400 G. C. cannot apply. The same situation obtains as to 1928.

Summarizing, we have seen that in the years 1921 and 1922 it is possible

for the provision in section 2400 G. C., to apply; in 1923 and 1924, impossible; in 1925 and 1926, possible; in 1927 and 1928, impossible. In subsequent years, the same variation would obtain.

The question is whether the legislature intended a situation such as this to obtain, whereby during a period of two years the president of the board of county commissioners is chosen in one way, and during the next two years by another way, to-wit by the action of the commissioners themselves.

Upon reflection it seems to me that the better view is that the provision in question, found in section 2400 G. C., is to apply when the situation produced by the amendment of section 2395 G. C. is such that it *can* apply. Courts and others called upon to construe a statute are not at liberty to hold it ineffective merely because of the oddity of its provisions, or the peculiarity of its effect when applied to another statute. While we may see no good reason for a rule that says that the county commissioners can elect their own president only two years out of every four, we must admit that it would be competent for the legislature to make such a rule.

You are therefore advised that if on the third Monday of September of any year, when the board of county commissioners organizes under section 2400 G. C., there is then on such board a commissioner whose term *first* expires, such commissioner shall be president of the board, and the members thereof are without authority in such a case to elect any other member as president.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2504.

INTOXICATING LIQUORS—MAYOR OF VILLAGE MAY COMMIT PERSON TO COUNTY JAIL FOR NON-PAYMENT OF FINE ASSESSED IN PROSECUTION UNDER CRABBE ACT—IN SUCH COMMITMENT, COUNTY AUDITOR CANNOT LEGALLY DISCHARGE SUCH PERSON FROM COUNTY JAIL.

1. *Under the provisions of section 4559 G. C. the mayor of a village may commit a person to the county jail for the nonpayment of the fine assessed in a prosecution under the Crabbe act.*

2. *In case of such commitment, the county auditor cannot legally discharge such person from the county jail under the provisions of section 2576 G. C.*

COLUMBUS, OHIO, October 24, 1921.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting the opinion of this department upon the following questions:

“(1) May the mayor of a village commit a person to the county jail for the non-payment of fines assessed under the Crabbe act?

(2) In case of such commitment may the county auditor discharge such person from the county jail under the provisions of section 2576 G. C.?”