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AN ADJUDICATION HEARING BY STATE BOARD OF EXAMINERS OF ARCHITECTS OF THE STATE OF OHIO—ARCHITECT'S CERTIFICATE—TO REVOKE—§§119.01 TO 119.13, INCLUSIVE, R.C.

SYLLABUS:

Where a party to an adjudication hearing under Sections 119.01 to 119.13, inclusive, Revised Code, presents his position in writing and does not testify in his own behalf, the administrative agency conducting the hearing has the right, under Section 119.09, Revised Code, to call such party to testify under oath as upon cross-examination.

Columbus, Ohio, July 21, 1960

Hon. R. C. Kempton, Executive Secretary,
State Board of Examiners of Architects, State of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“The State Board of Examiners of Architects of the State of Ohio is presently engaged in an adjudication hearing seeking to determine whether or not the architect's certificate of a registered architect should or should not be revoked. One day of this hearing has been consummated, and within a short time, the hearing will be reconvened for further testimony.

“In the opening statement presented by counsel for the architect, it was indicated that the architect would elect to present a written statement. Presumably this position is based upon Section 119.07, Revised Code of Ohio, commonly referred to as the Administrative Procedure Act, which provides as follows:

“‘Except when a statute prescribes a notice and the persons to whom it shall be given, in all cases in which section 119.06 of the Revised Code requires an agency to afford an opportunity for a hearing prior to the issuance of an order, the agency shall give notice to the party's informing him of his right to a hearing. Such notice shall be given by registered mail, return receipt requested, and shall include the charges or other reasons for such proposed action, the law or rule directly involved, and a statement informing the party that he is entitled to a hearing if he requests it within thirty days of the time of mailing the notice.

The notice shall also inform the party that at the hearing he may appear in person, by his attorney, or by such other representative as is permitted to practice before the agency, or *may present his position, arguments or contentions in writing* and that at the hearing he may present evidence and examine witnesses appearing for and against him. A copy of such notice shall be mailed to attorneys or other representatives of record representing the party. This paragraph does not apply to situations in which such section provides for a hearing only when it is requested by the party.'

"However, Section 119.09, Revised Code, also contains the following language:

"* * *

'In any adjudication hearing required by sections 119.01 to 119.13, inclusive, of the Revised Code, the agency may call any party to testify under oath as upon cross examination.'

"It would seem that under Section 119.07 the party upon whom the notice is required to be served has a right to present 'his position, argument or contentions in writing', which could be interpreted as meaning he would not be required to testify in his own behalf.

"On the other hand, the above Code provision of Section 119.07 seems to give the Agency the right to call '*any party*' to testify as upon cross examination.

"An opinion is requested as to whether or not, if the architect should elect to submit a written statement in accordance with the provisions of Revised Code 119.07, would the Agency have the right, as a part of its prima facie case, to require the architect to testify on cross examination under threat of contempt proceedings, or whether the architect would have the right to refuse to so testify, relying upon his written statement."

It should be noted that Section 119.07, Revised Code, quoted in your request, in listing what must be contained in the notice of hearing, also lists the rights of the party. By stating that the notice shall inform the party that he "* * * may present *his* position, arguments, or contentions in writing and that at the hearing *he* may present evidence and examine witnesses * * *", this section inferentially describes the rights of the party and describes how *he* may present *his* case. This conclusion is arrived at because of the use of the limiting pronouns "his" and "he" in conjunction with the term "party" throughout this section.

Section 119.09, Revised Code, describes how the agency must conduct the hearing and also the agency's rights in presenting its case. This section reads in part:

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“In any adjudication hearing required by section 119.01 to 119.13, inclusive, of the Revised Code, the agency may call any *party* to testify under oath as upon cross-examination.

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(Emphasis added)

The paragraph quoted expressly gives to the administrative agency conducting the hearing the right to call a party to the hearing upon cross-examination as a part of the agency's case.

Thus, Section 119.07, Revised Code, deals with the party and Section 119.09, Revised Code, with the agency. Section 119.07, Revised Code, should certainly not be read so as to preclude the agency from doing what Section 119.09, Revised Code, expressly authorizes it to do. These statutes, while dealing with the same general subject, do not conflict with each other. There is a well settled rule of statutory construction that statutes upon the same subject matter should, so far as is reasonably possible, be construed in such a fashion that they will be in harmony. 2 Sutherland Statutory Construction 3rd ed., Section 5201, page 531. The rule clearly applies in the instant case.

Accordingly, it is my opinion and you are advised that where a party to an adjudication hearing under Sections 119.01 to 119.13, inclusive, Revised Code, presents his position in writing and does not testify in his own behalf, the administrative agency conducting the hearing has the right, under Section 119.09, Revised Code, to call such party to testify under oath as upon cross-examination.

Respectfully,

MARK McELROY

Attorney General