

**OPINION NO. 86-045****Syllabus:**

1. A person, who is initially appointed to the Governor's Council on Disabled Persons to fill the remainder of an unexpired term and who is appointed to a consecutive three-year term, may not, pursuant to R.C. 3303.41, be appointed to a second consecutive three-year term.
2. A person, who was initially appointed, upon creation of the Governor's Council on Disabled Persons in 1982, to serve a term of one or two years, and who thereafter was appointed to a consecutive three-year term, may not, pursuant to R.C. 3303.41, serve a second consecutive three-year term.

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**To: Robert L. Rabe, Administrator, Rehabilitation Services Commission, Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1986**

I have before me your request for my opinion regarding the terms of office of persons appointed to the Ohio Governor's Council on Disabled Persons in light of R.C. 3303.41, which provides that members of the Council "may succeed themselves not more than one time." I have restated your questions concerning interpretation of this provision as follows:

1. Does R.C. 3303.41 permit a person, who is initially appointed to fill the remainder of an unexpired term and who is appointed to a consecutive three-year term, to be appointed to a second consecutive three-year term?
2. Does R.C. 3303.41 permit a person, who was initially appointed, upon creation of the Council in 1982, to serve a term of one or two years and who thereafter was appointed to a consecutive three-year term, to be appointed to a second consecutive three-year term?

The Ohio Governor's Council on Disabled Persons is created by R.C. 3303.41 which provides, in part, as follows:

There is hereby created the governor's council on disabled persons. The council shall consist of twenty-one members of which the majority shall be

disabled persons as defined in this section appointed by the governor for a term of three years except that for initial appointments, seven members shall be appointed for a term of one year, seven members shall be appointed for a term of two years, and seven members shall be appointed for a term of three years. Members may succeed themselves not more than one time. The governor shall annually appoint a chairman who may succeed himself not more than one time.... (Emphasis added.)

It is clear that a person who is appointed to serve a three-year term may succeed himself only once, thereby serving consecutively for a period of six years. You question, however, whether an individual who has served for the remainder of another person's unexpired term may then serve consecutively two three-year terms.

Words used in a statute must be given their plain and ordinary meaning. See R.C. 1.42; Bernardini v. Board of Education, 58 Ohio St. 2d 1, 387 N.E.2d 1222 (1979). It is axiomatic that effect must be given to words used in a statute and that words not used may not be inserted. Dougherty v. Torrence, 2 Ohio St. 3d 69, 442 N.E.2d 1295 (1982); Bernardini v. Board of Education. R.C. 3303.41 provides that members of the Council "may succeed themselves not more than one time." This statute plainly prohibits a member from serving consecutively more than two terms. R.C. 3303.41 contains no qualification as to the number of years a member must have served during his first term in order to be precluded from succeeding himself more than once, and I am unable to insert such a qualification.

The intent of R.C. 3303.41 is illustrated by contrasting the language of that statute with R.C. 5126.02, which governs appointments to a county board of mental retardation and developmental disabilities, and provides as follows:

[A]ll appointments shall be for terms of three years. A member who has served during each of two consecutive terms shall not be reappointed for a subsequent term until one year after he ceases to be a member of the board, except that a member who has served for less than one and one-half years in either of two consecutive terms may be reappointed for a subsequent term before becoming ineligible for reappointment for one year. (Emphasis added.)

Thus, R.C. 5126.02 expressly provides that where a person has served less than one and one-half years in either of two consecutive terms, he is not precluded from serving a third consecutive term. See also R.C. 340.02 (set forth below).

Thus, it is evident that the intent of R.C. 3303.41 is to permit an individual to succeed himself only once for a total of two terms, regardless of the total number of years served during each term. Because R.C. 3303.41 simply provides that no member shall succeed himself more than once, I must conclude that a member may serve only two consecutive terms, regardless of the fact that he may have been appointed initially to serve an unexpired term. Therefore, my response to your first question is that R.C. 3303.41 does not permit a person who is initially appointed to fill the remainder of an unexpired term and who is subsequently appointed to a consecutive three-year

term, to be reappointed to a second consecutive three-year term.<sup>1</sup>

Your second question asks whether a person, who was initially appointed, upon creation of the Council in 1982, to serve a term of one or two years and who thereafter was appointed to a consecutive three-year term, may be permitted to serve an additional consecutive three-year term. Under the analysis set forth above, I must find that such a Council member may not, pursuant to R.C. 3303.41, be appointed to an additional three-year term. R.C. 3303.41 provides, in part, that:

The council shall consist of twenty-one members...appointed by the governor for a term of three years except that for initial appointments, seven members shall be appointed for a term of one year, seven members shall be appointed for a term of two years, and seven members shall be appointed for a term of three years. (Emphasis added.)

R.C. 3303.41, which states that members may succeed themselves not more than one time, provides no exception for those who serve initial terms of one or two years. Accordingly, I cannot imply such a qualification. See Dougherty v. Torrence, 2 Ohio St. 3d at 70, 442 N.E.2d at 1296.

Again, it is instructive to contrast R.C. 3303.41 with R.C. 3304.12(B) and R.C. 340.02. R.C. 3304.12(B) provides that each of the seven members of the Rehabilitation Services Commission "first appointed" shall serve a term of one, two, three, four, five, six, or seven years, and, thereafter, the "terms of office shall be for seven years...with no person eligible to serve more than two seven-year terms." Pursuant to R.C. 3304.12(B), initial appointments may be for terms of less than seven years, the term for which all subsequent appointments are made. R.C. 3304.12(B), although providing for terms of less than seven years, expressly limits only the number of seven-year terms which a member may serve. Similarly, R.C. 340.02 provides that members of a community mental health board "shall be appointed for a term of four years...except that one-third of initial appointments...shall be for terms of two years, one third for terms of three years, and one-third for terms of four years. No member shall serve more than two consecutive four-year terms. A member may serve for three consecutive terms only if one of the terms is for less than two years." R.C. 340.02 expressly limits the number of consecutive four-year terms which a member may serve, and recognizes that a member may serve a term which is for less than four years. Since R.C. 3303.41 does not expressly afford different treatment to terms of varying lengths for purposes of precluding more than two successive terms, I conclude that a person, who was initially appointed, upon creation of the Council in 1982, to serve a term of one or two years and who then served a consecutive three-year term may not be

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<sup>1</sup> Cf. State ex rel. Glander v. Ferguson, 148 Ohio St. 581, 76 N.E.2d 373 (1947) (for purposes of Ohio Const. art. II, §20, which prohibits a change in salary during a public officer's "existing term," a term is the period of time during which the officer serves and not the period of time constituting the statutory term of office).

reappointed to serve an additional consecutive term of three years.

It is, therefore, my opinion, and you are advised, that:

1. A person, who is initially appointed to the Governor's Council on Disabled Persons to fill the remainder of an unexpired term and who is appointed to a consecutive three-year term, may not, pursuant to R.C. 3303.41, be appointed to a second consecutive three-year term.
2. A person, who was initially appointed, upon creation of the Governor's Council on Disabled Persons in 1982, to serve a term of one or two years, and who thereafter was appointed to a consecutive three-year term, may not, pursuant to R.C. 3303.41, serve a second consecutive three-year term.