

268.

STATE BOARD OF PHARMACY—WHEN MEMBER'S TERM BEGINS.

SYLLABUS:

When a person has been appointed by the governor as a member of the State Board of Pharmacy to succeed a member whose term has expired and such appointment has been confirmed by the Senate he becomes a member of said board when he has qualified by taking oath of office and his term of office begins to run as of April 1st of the year in which the term of his predecessor expired.

COLUMBUS, OHIO, April 1, 1927.

State Board of Pharmacy, Columbus, Ohio.

DEAR SIR:—Acknowledgment is made of your recent request for an opinion, which reads as follows:

“When a member of the State Board of Pharmacy has been appointed by the Governor, and confirmed by the Senate, he then receives his commission from the Governor and the Secretary of State. Upon receiving his commission he then takes the oath of office and files a copy of such oath with the Secretary of State and the secretary of the Board of Pharmacy.

The question is—the time of his predecessor having expired does the newly appointed member's term begin when he files the oath of office with the secretary of the Board of Pharmacy, or, would he be required to wait until a meeting of the Board of Pharmacy?”

The members of the State Board of Pharmacy are appointed under authority of Section 1296 of the General Code of Ohio, which reads as follows:

“There shall be a state board of pharmacy, consisting of five members, who shall be appointed by the governor with the advice and consent of the senate. The Ohio state pharmaceutical association may annually submit to the governor the names of five registered pharmacists, and from the names so submitted or from others, at his discretion, the governor each year shall appoint one member of the board for a term of five years and until his successor is appointed and qualified.”

Section 1296, General Code, *supra*, does not set out the date of the beginning of the term of any member of the State Board of Pharmacy, nor is it clear as to the meaning of the word “qualified”. However, administrative interpretation of a given law while not conclusive is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative so to do. (*Industrial Commission vs. Brown*, 92 O. S. 309, 311). We must therefore, look into the history of Section 1296, General Code, *et seq.*, and the administrative interpretation given thereto.

The State Board of Pharmacy was originally organized under authority of Section 4406 R. S., as amended by the act of March 20, 1884 (81 O. L. 61). Prior to that time there had been a “pharmaceutical examining board” authorized to examine persons desirous of engaging in the business of a retail apothecary or of retailing drugs, etc., in cities of the first grade of the first class. (71 O. L. 287; 72 O. L. 16).

Section 4406 R. S. as amended in 81 O. L. 61, provided as follows:

“The Ohio State Pharmaceutical Association shall, immediately upon

the passage of this act, submit to the governor the names of ten persons, residents of this state, who have had at least ten years' experience as pharmacists and druggists, and from the names so submitted to him or others, the governor shall, with the approval of the senate, select and appoint five persons, who shall constitute a board, to be styled the Ohio Board of Pharmacy; and any member of the board may be removed by the governor for good cause shown him; one member of said board shall be appointed, and hold his office for one year, one for two years, one for three years, one for four years, and one for five years, and until his successor shall be appointed and qualified; and at its regular annual meeting in each and every year thereafter, the said Ohio State Pharmaceutical Association shall select and submit to the governor the names of five persons, with the qualifications hereinbefore mentioned, and the governor shall with the approval of the senate, select and appoint from the names so submitted or others, one member of said board, who shall hold his office for five years, and until his successor shall be appointed and qualified. Any vacancy that may occur in said board shall be filled for the unexpired term by the governor, with the approval of the senate. Each member of said board shall, within ten days after his appointment, take and subscribe an oath or affirmation, before a competent officer, to faithfully and impartially perform the duties of his office."

Section 4406 R. S. eventually became Section 1296, General Code. Section 4406 was amended in 99 O. L. 503 to read as Section 1296, General Code, now reads.

The act above referred to (81 O. L. 61) provided: "This act shall take effect and be in force from and after its passage." I am informed that pursuant to the provisions of that act and particularly the provisions of Section 4406 R. S. as amended therein, the State Board of Pharmacy was organized in the latter part of March, 1884, the terms of office of the respective members of the board commencing to run as of April 1, 1884. The term of office of the member appointed for one year under authority of Section 4406 R. S., supra, therefore, expired on March 31, 1885, and the terms of the other members of said board expired on March 31st of the succeeding years respectively, the terms of their successors commencing to run on the 1st day of April of the years in which such successors were appointed.

Section 1296, General Code, supra, does not indicate what is required on the part of one appointed as a member of the State Board of Pharmacy in order to qualify. Section 4406 R. S., supra, provided that each member of said board must within ten days after his appointment take and subscribe an oath or affirmation before a competent officer to faithfully and impartially perform the duties of his office.

Section 7 of Article XV of the Ohio Constitution, reads as follows:

"Every person chosen or appointed to any office under this state, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States or of this state, and also an oath of office."

Section 2 of the General Code of Ohio provides in part:

"Each person chosen or appointed to an office under the constitution or laws of the state * * * shall take an oath of office before entering upon the discharge of his duties."

Section 3 of the General Code prescribed the form of oath of office to be taken by each judge of the court of record and provides:

"The oath of office of every other officer, deputy or clerk, shall be to support the constitution of the United States and the constitution of this state, and faithfully to discharge the duties of his office."

A member of the State Board of Pharmacy is not required to give a bond and the only other requirement for qualifying for the office would therefore be the taking of the oath of office prescribed in sections 2 and 3 of the General Code, supra. In other words having been appointed by the governor and the appointment confirmed by the senate, the only remaining act to be done by the appointee in order to qualify is to take an oath of office.

For the reasons above stated it is my opinion that when a person has been appointed by the governor as a member of the State Board of Pharmacy to succeed a member whose term has expired and such appointment has been confirmed by the senate he becomes a member of said board when he has qualified by taking an oath of office and that his term of office began to run as of April 1st of the year in which the term of his predecessor expired.

Respectfully,
EDWARD C. TURNER,
Attorney General.

269.

PROBATION OFFICER—EXPIRATION OF TERM—WHETHER OR NOT
UNDER CIVIL SERVICE.

SYLLABUS:

1. *A chief probation officer appointed by the juvenile court under the provisions of Section 1662, General Code, is within the unclassified or classified civil service depending upon whether he is selected as one of the exemptions of the court under favor of sub-section 8 of Section 486-8a, General Code.*

2. *If so selected his term ends with the expiration of the term of office or the death of the judge making the appointment and he has no further claim upon such office unless he is reappointed by the incoming juvenile judge.*

COLUMBUS, OHIO, April 2, 1927.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent request for an opinion which reads as follows:

"Due to the death of Judge Willard J. Wright, Judge of the Court of Common Pleas of Warren County, Ohio, a vacancy occurred in said office and on March 23rd, 1927, the Governor appointed Hon. Charles B. Dechant to fill the vacancy so caused, until the next general election.

If Judge Dechant should be designated as the Juvenile Judge of Warren county, Ohio, under the terms and provisions of Section 1639 of the General Code, and appoints a chief probation officer under the authority of Section 1662 of the General Code, I am respectfully requesting the opinion of your department as to whether or not said chief probation officer's term will expire at the expiration of said judge's term, or will said chief probation officer be under civil service, and hold said office under the rules and regulations governing civil service appointees."