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AMENDMENTS MADE BY AM. H. B. 918 OF 104TH G. A. (ADMINISTRATIVE PROCEDURE ACT) MAKE CHAPTER 119, R.C. APPLICABLE TO PROCEDURES OF OHIO CIVIL RIGHTS COMMISSION ONLY AS THEY RELATE TO MANNER IN WHICH FINAL ORDERS OF THE COMMISSION ARE ISSUED AND SERVED ON RESPONDENTS AND TO MODIFICATION OF SUCH FINAL ORDERS—AM. H. B. NO. 918 OF 104TH G. A.— §§4112.05 (G) AND (I), 119, R.C.

SYLLABUS:

The amendments made by Amended House Bill No. 918 of the 104th General Assembly, effective October 24, 1961, to Section 4112.05 (G) and (I), Revised Code, making certain procedure of the Ohio Civil Rights Commission subject to Chapter 119., Revised Code, the Administrative Procedure Act, have the effect of making Chapter 119., Revised Code, applicable to procedures of the Commission only as they relate to the manner in which final orders of the Commission are issued and served on respondents and to modification or reconsideration of final orders of the Commission.

Columbus, Ohio, August 17, 1961

Hon. Frank W. Baldau
Executive Director, The Ohio Civil Rights Commission
Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion, which request reads as follows:

“In the passage of H. B. 918 by the 104th General Assembly, two amendments were adopted. The first such amendment is found in Sec. 4112.05 (G), Revised Code. This paragraph now reads, in part, as follows:

“ ‘(G) If upon all the evidence the commission determines that the respondent has engaged in, or is engaging in, any unlawful discriminatory practice, whether against the complainant or others, the commission shall state its findings of fact, and *subject to the provisions of Chapter 119. of the Revised Code*, shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice * * *’
(Amendment underlined.)

“The second amendment is found in Sec. 4112.05 (I), Revised Code, which now reads as follows:

“ ‘(I) Until a transcript of the record in a case shall be filed in a court as hereinafter provided, the commission may, *subject to the provisions of Chapter 119. of the Revised Code*, at any time, upon reasonable notice, and in such manner as it shall deem proper, modify or set aside in whole or in part, any finding or order made by it.’
(Amendment underlined.)

“At its meeting on July 20, 1961, the Commission authorized a request for your opinion concerning the effect of these two amendments on the statutory procedure contained in the Civil Rights Act (Sec. 4112.01 to 4112.08, inclusive).”

I have analyzed the effect of the two recent amendments which you have quoted in your request. It is my conclusion that the two references to Chapter 119., Revised Code, the Administrative Procedure Act, are limited to the matters contained in paragraphs (G) and (I) of Section 4112.05, Revised Code. The effect of the inclusion in paragraph (G) is

to make the issuance and service of an order of the Commission requiring a respondent to cease and desist from designated practices to be subject to the provisions of the Administrative Procedure Act. This will result in the following paragraph contained in Section 119.09, Revised Code, becoming applicable to procedures of the Civil Rights Commission. This paragraph reads as follows :

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“After such order is entered on its journal, the agency shall serve by registered mail, return receipt requested, upon the party affected thereby, a certified copy of the order and a statement of the time and method by which an appeal may be perfected. A copy of such order shall be mailed to the attorneys or other representatives of record representing the party.”

While this provision had not been expressly contained in Chapter 4112., Revised Code, heretofore, I note that most of it had been made a part of regular Commission procedure incorporated in Rule X, paragraph (d), Rules and Regulations of the Ohio Civil Rights Commission. The only addition is the requirement for service of the order upon attorneys or other representatives of record representing any party.

The second inclusion of a reference to the Administrative Procedure Act, found in paragraph (I) of Section 4112.05, Revised Code, presents a more perplexing problem. In essence, this provides that subject to the Administrative Procedure Act the Commission may modify or set aside any order or finding as long as the transcript of the record has not been filed in court on appeal. The problem arises because the Administrative Procedure Act contains no reference whatsoever to modification or setting aside of any order of an administrative agency after such order is entered on the agency's journal. In the light of this, and despite the strong presumption against any statutory language being considered superfluous, I reach the necessary conclusion that this amendment does not cause any change in present procedure of the Commission.

It should also be noted that these two amendments have no effect whatsoever on the judicial review provisions of Section 4112.06, Revised Code, which remain intact as they existed prior to these amendments.

While it is my conclusion that the amendments referring to the Administrative Procedure Act have no other effect on the procedures incorporated in Chapter 4112., Revised Code, it is important to understand that

even if the contrary were true, i.e., the amendments made the Administrative Procedure Act applicable to all parts of Chapter 4112., Revised Code, the Commission's procedures would not be changed in any basic way. This is true because the Administrative Procedure Act is legislation of a general character providing a general procedure for most of the administrative agencies of state government. The procedural provisions of Chapter 4112., Revised Code, are specific laws outlining the methods to be used by the Ohio Civil Rights Commission. It is a common tenet of statutory construction that a special specific law operates as an exception to a general law covering the same subject matter. This is also reflected in another principle of statutory construction in which there is a presumption against implied repeal of any part of a statute. In the present case, the General Assembly amended the law to include reference to the Administrative Procedure Act, but it did not repeal the specific procedural provisions of Section 4112.05, Revised Code, which were directed especially to the Ohio Civil Rights Commission. The presumption against implied repeal is persuasive that the General Assembly did not intend to modify the express provisions of Section 4112.05, Revised Code, but only sought to supplement them in certain ways by including the references to the Administrative Procedure Act. Precedence is found for this in the relationship between the Administrative Procedure Act and the Appellate Procedure Act, that part of the Revised Code providing for appeals in civil cases to appellate court. These two sections have been construed to provide that on appeals to courts from administrative agencies, which are subject to the Administrative Procedure Act, the provisions of that law apply. But in circumstances where the administrative Procedure Act does not cover the procedure, the Appellate Procedure Act is used to fill these gaps and to that extent only is applicable to administrative appeals.

What, then, are these areas in which the gaps in the Civil Rights Act could be filled by the Administrative Procedure Act? Initially, it should be noted that the Administrative Procedure Act does not apply to any administrative agency prior to initiation of a formal hearing. This means that the investigatory and conciliatory functions could in no way be made subject to the Administrative Procedure Act. The basic area in which the Administrative Procedure Act could be used to supplement the Civil Rights Commission Procedure is in the area of hearing examiners and their reports to the Commission. While the Civil Rights Act is silent as to this procedure, Section 4112.05, Revised Code, does permit the Com-

mission to conduct formal hearings through hearing examiners. In order to facilitate this process the Commission provided in Rule IX of its rules and regulations for the procedural details of formal hearings conducted by hearing examiners. This rule follows exactly Section 119.09, Revised Code, the analogous provision of the Administrative Procedure Act. The only distinction between the two is that under the Administrative Procedure Act a party must submit its objections to the report of the hearing examiner within ten days after service upon the parties, while Rule IX provides for objections to be filed within fifteen days. The extra guarantee under Rule IX is to the benefit of any party adversely affected by a recommendation of an examiner and does not reflect a significant conflict with the Administrative Procedure Act.

It is therefore my opinion and you are accordingly advised that the amendments made by Amended House Bill No. 918 of the 104th General Assembly, effective October 24, 1961, to Section 4112.05 (G) and (I), Revised Code, making certain procedure of the Ohio Civil Rights Commission subject to Chapter 119., Revised Code, the Administrative Procedure Act, have the effect of making Chapter 119., Revised Code, applicable to procedures of the Commission only as they relate to the manner in which final orders of the Commission are issued and served on respondents and to modification or reconsideration of final orders of the Commission.

Respectfully,

MARK McELROY

Attorney General