

OPINION NO. 66-134

Syllabus:

1. The chairman of the Youth Commission may issue all regulations for the Youth Commission, but not for its separate divisions created by Section 5139.02, Revised Code.

2. The chairman of the Youth Commission is not the sole appointing authority for the separate divisions created pursuant to Section 5139.02, Revised Code, within the Youth Commission.

To: James A. Rhodes, Governor of Ohio, Columbus, Ohio
By: William B. Saxbe, Attorney General, August 4, 1966

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

"Section 5139.01 of the Revised Code was amended, effective July 22, 1965, to provide that the Chairman of the Youth Commission shall be the chief executive and

administrative officer of the Commission. In my discussions with the Chairman of the Youth Commission, I find that there is some question in his mind and in the minds of the other members of the Commission as to the scope and effect of the 1965 amendment. Specifically, your advice is requested on the following points:

"1. Notwithstanding other language of the Youth Commission Act, does the Chairman now issue all regulations for the Youth Commission and for its separate divisions?

"2. Notwithstanding other language in the Youth Commission Act designating other commissioners as appointing authorities for their separate divisions, is the Chairman of the Youth Commission now the sole appointing authority?"

Section 121.02, Revised Code, creates the various administrative departments and their directors. Paragraph (O) specifically creates the Youth Commission. The statute in pertinent part reads as follows:

"The following administrative departments and their respective directors are hereby created:

* * * * *

"(O) The Youth Commission to be administered by the chairman of the Youth Commission.

"The director of each department shall exercise the powers and perform the duties vested by law in such department."

Section 5139.01 (B) as amended effective July 22, 1965 reads as follows:

"(B) There is hereby created a youth commission to consist of three members who shall be appointed by the governor with the advice and consent of the senate, and shall serve during the term of the appointing governor but are subject to removal at the pleasure of the governor. The governor shall designate one of the members of the commission to be chairman of the commission; one member to be director of the division of correctional services; and one member to be director of the division of community services. Each member of the commission shall devote his entire time to the duties of his office

and shall hold no other office or position of trust or profit during his term of office. A vacancy in the commission shall be filled in accordance with section 3.03 of the Revised Code.

"The chairman is the chief executive and administrative officer of the commission and as such has all of the powers of a department head as the same are set forth in Chapter 121. of the Revised Code. He may prescribe regulations for the government of the youth commission, the conduct of its officers and employees, the performance of its business, and the custody, use, and preservation of the commission's records, papers, books, documents, and property. Whenever Chapter 5139. or any other chapter or section of the Revised Code imposes a duty on or requires an action of the youth commission, such duty or action shall be performed by the chairman in the name of the commission."

"The other members of the youth commission have no administrative responsibilities other than those imposed upon them as directors of divisions. They shall, however, consult with and advise the chairman on matters relating to commission policies and shall perform such other duties as the chairman may assign."

(Emphasis added)

Section 5139.02, Revised Code, reads as follows:

"There is created within the youth commission a division of community services and a division of correctional services. Each division shall have as its administrative head a director who shall be a member of the commission as provided in section 5139.01 of the Revised Code. When a vacancy occurs in the office of director, the assistant director of the affected division shall act as director until the vacancy is filled. The position of assistant division director shall be in the unclassified civil service of the state.

"The director of each division may prescribe regulations for the government of his division, the conduct of its employees, the performance of its business, and the custody, use, and preservation of the records, papers, books, documents, and property pertaining thereto."

"The director of each division is an appointing authority within the meaning of Chapter 143, of the Revised Code and each director, and the chairman of the commission may appoint secretaries and assistants outside the classified civil service as provided in subdivision (A) (B) of section 143.08 of the Revised Code."

(Emphasis added)

Section 5139.01, *supra*, does not provide the other members of the Youth Commission with any administrative responsibilities other than those imposed upon them as director of the division. Section 5139.02, *supra*, does impose upon the division directors the right to prescribe regulations for the government of his division, the conduct of its employees, the performance of its business, and the custody, use and preservation of the records, papers, books, documents, and property pertaining thereto.

Section 5139.04, Revised Code, does place duties upon the Commission and thus the chairman of the Commission shall perform these duties.

Section 5139.04, Revised Code, (A) and (F), reads as follows:

"The youth commission shall:

"(A) Direct and co-ordinate work of the division of community services and of the division of correctional services described in sections 5139.03 to 5139.15, inclusive, of the Revised Code.

* * * * *

"(F) Adopt and promulgate rules for regulating its organization and operation, and for administration of Chapter 5139. of the Revised Code;

* * * * *

Neither Section 5139.04 (A) and (F), *supra*, nor any other paragraphs within this section impose a duty upon the Commission to prescribe regulations for the divisions of community services and of correctional services.

Section 5139.01, Revised Code, was amended effective July 22, 1965 and Section 5139.02, Revised Code, was effective October 7, 1963.

Section 5139.01, Revised Code, as it was originally enacted in Amended Substitute House Bill No. 299 reads as follows:

"There is hereby created a youth commission to consist of three members who shall

be appointed by the governor with the advice and consent of the senate, and shall serve during the term of the appointing governor but are subject to removal at the pleasure of the governor. The governor shall designate one of the members of the commission to be chairman of the commission; one member to be director of the division of correctional services; and one member to be director of the division of community services. The chairman is the chief executive and administrative officer of the commission. Each member of the commission shall devote his entire time to the duties of his office and shall hold no other office or position of trust or profit during his term of office. A vacancy in the commission shall be filled in accordance with section 3.03 of the Revised Code.

"The chairman of the commission shall receive an annual salary of fifteen thousand dollars, and each of the other members of the commission shall receive an annual salary of fourteen thousand dollars.

"Two members of the commission constitute a quorum for the purpose of conducting the business thereof. A vacancy in the commission shall not impair the right of the remaining members to exercise all of the powers of the commission."

It is stated in Sutherland Statutory Construction, Volume 2, page 529, 530, Section 5201, as follows:

"On the presumption that whenever the legislature enacts a provision it has in mind the previous statutes relating to the same subject matter, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they should all be construed together."

The Legislature, having knowledge of Section 5139.02, Revised Code, giving the division directors authority to prescribe rules, did not give the Youth Commission Chairman the same power under Section 5139.01, Revised Code, or it would have amended this section to be consistent. Furthermore, the Legislature by positive action in amending Section 5139.01, supra, added the last paragraph of this section confirming authority granted division directors in Section 5139.02, supra.

Section 5139.01 (B), supra, establishes the Youth Commission as being composed of three members. The Governor is to designate one member to be director of the division of correctional services, and the other member to be director of the division of community services and the remaining

member as chairman. Nowhere does it say that the Youth Commission is composed of these two divisions; it merely states that two members shall be directors of these divisions.

Answering your first inquiry, the Chairman of the Youth Commission may issue all regulations for the Youth Commission, but the individual division directors have the specific authority to prescribe regulations for the government of their own divisions.

In regard to your second inquiry, Section 5139.04 (D), Revised Code, reads as follows:

"The youth commission shall:

"* * * * *

"(D) Obtain personnel necessary for the performance of its duties;

"* * * * *"

Section 5139.04 (D), supra, directs that the Youth Commission obtain personnel for the Commission staff itself but this does not imply that the Commission is to obtain personnel for the divisions also.

Section 5139.02, supra, the last paragraph thereof, states that the director of each division is an appointing authority within the meaning of Chapter 143, Revised Code. Appointing authority is defined in Section 143.01 (D), Revised Code, as follows:

"As used in sections 143.01 to 143.48, inclusive, of the Revised Code:

"* * * * *

"(D) 'Appointing authority' signifies the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution.

"* * * * *"

Section 5139.02, supra, the last paragraph thereof, provides that each director and the chairman of the Commission may appoint secretaries and assistants outside the classified civil service as provided in Section 143.08 (A) (8), Revised Code.

Section 143.08 (A) (8), supra, reads as follows:

"The civil service of the state and the several counties, cities, city health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

"(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by sections 143.01 to 143.48, inclusive, of the Revised Code.

" * * * * *"

"(8) Three secretaries, assistants, or clerks and one personal stenographer for each of the elective state officers; and two secretaries, assistants, or clerks and one personal stenographer for other elective officers and each of the principal appointive executive officers, boards, or commissions, except civil service commissions, authorized to appoint such secretary, assistant, or clerk and stenographer;

" * * * * *"

Section 5139.02, supra, is very specific in regard to the division of authority between the chairman and the division directors. The chairman, in regard to any authority to make appointments within the divisions established in Section 5139.02, supra, is specifically limited to appointments within the meaning of Section 143.08 (A) (8), supra. Thus, in answer to your second inquiry, the chairman of the Youth Commission is not the sole appointing authority for the separate divisions under the Youth Commission.

Therefore, you are advised and it is my opinion that:

1. The chairman of the Youth Commission may issue all regulations for the Youth Commission, but not for its separate divisions created by Section 5139.02, Revised Code.
2. The chairman of the Youth Commission is not the sole appointing authority for the separate divisions created pursuant to Section 5139.02, Revised Code, within the Youth Commission.