

2214.

TRUSTEE—OHIO STATE UNIVERSITY—TERM CONTINUES UNTIL SUCCESSOR IS APPOINTED BY GOVERNOR AND CONFIRMED BY SENATE.

SYLLABUS:

Upon the expiration of the fixed portion of the term of a trustee of Ohio State University, he continues to serve until his successor is appointed by the governor and confirmed by the senate.

COLUMBUS, OHIO, June 11, 1928.

HON. JULIUS F. STONE, *Chairman Board of Trustees, Ohio State University, Columbus, O.*

DEAR SIR:—This will acknowledge receipt of your recent letter, enclosing a letter received from Hon. Egbert H. Mack, one of the trustees of Ohio State University.

In his letter to you Mr. Mack raises the question whether or not, in view of the recent appointment by the Governor of Mr. Samuel N. Summer to succeed Mr. Mack as a member of the Board of Trustees of the University, his responsibility as a trustee has ceased. He calls attention to the opinion of my predecessor, rendered on May 26, 1923, and reported in Opinions of the Attorney General for 1923, at page 306. It appears that the seven year term of Mr. Mack, as trustee, recently expired and that the Governor appointed Mr. Summer to succeed him.

Section 7942, General Code, provides for the appointment and term of office of the trustees of Ohio State University. That section is as follows:

“The government of the Ohio State University shall be vested in a board of seven trustees, who shall be appointed by the governor, with the advice and consent of the senate. One trustee shall be appointed each year for a term of seven years from the fourteenth day of May of such year, and serve until his successor is appointed and qualified. A vacancy in the office of trustee shall be filled by an appointment to be made in the same manner as an original appointment, but only for the unexpired term. The trustees shall not receive compensation for their services, but shall be paid their reasonable necessary expenses while engaged in the discharge of their official duties.”

You will observe that each trustee is appointed for a term of seven years, and is to serve “until his successor is appointed and qualified.” It is further to be noted that a vacancy shall be filled by an appointment to be made in the same manner as an original appointment, which is by appointment by the governor with the advice and consent of the senate:

Section 12 of the Code is as follows:

“When a vacancy in an office filled by appointment of the governor, with the advice and consent of the senate, occurs by expiration of term or otherwise during a session of the senate, the governor shall appoint a person to fill such vacancy and forthwith report such appointment to the senate. If such vacancy occurs when the senate is not in session, and no appointment has been made and confirmed in anticipation of such vacancy, the governor shall fill the vacancy and report the appointment to the next session of the senate, and, if the senate advise and consent thereto, such appointee shall hold the office for the full term, otherwise a new appointment shall be made.”

Section 3 of Article VII of the Constitution of Ohio is as follows:

“The governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.”

The above quoted provisions were under consideration in the opinion referred to above. The situation then existing was exactly like the one here involved. The term of Mr. C. F. Kettering had expired and the Governor inquired of my predecessor whether he could appoint a trustee as successor to Mr. Kettering without the advice and consent of the senate, and, if so, what right the unconfirmed appointee had to assume office. An exhaustive consideration of the questions there raised was given in the opinion and the conclusions reached are set forth in the syllabus, which is as follows:

“1. There is at this time no vacancy in the office of trustee of Ohio State University now held by C. F. Kettering, within the meaning of Sections 12 and 7942 of the General Code, or of Section 3 of Article VII of the Ohio Constitution, and a person appointed at this time by the governor without the advice and consent of the senate, could not lawfully assume the duties of the office.

2. The senate is not, at the present time, ‘in session,’ within the meaning of Section 12 of the General Code, but that fact would not warrant the governor in making a so-called recess appointment of a successor to Mr. Kettering, for the reason that there is now no vacancy in the office to be filled.

3. A vacancy in an office, appointments to which are subject to confirmation by the senate, does not occur at the expiration of the fixed portion of the term, in cases where there is no constitutional provision, preventing the incumbent from continuing in office thereafter, and the statutes under which he was appointed and confirmed, or which are applicable thereto, expressly authorize him to continue in office until his successor is appointed and confirmed.

4. An appointment to office in ‘anticipation of a vacancy’ under Section 12 of the General Code may only be made by the governor and senate—the governor nominating, the senate confirming—and not the governor alone.”

I see no reason to depart from the considered conclusions of my predecessor, and accordingly I am of the opinion that there now exists no vacancy in the office of trustee of Ohio State University by reason of the expiration of the fixed portion of the term of Mr. Mack. It follows, therefore, that Mr. Mack continues to function as a trustee of Ohio State University until the appointment of Mr. Summer has received the confirmation of the senate.

I am, of course, not passing upon a situation where a vacancy in the office of trustee exists by reason of death, resignation or otherwise. As to such a situation a different rule would apply.

Respectfully,
EDWARD C. TURNER,
Attorney General.