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1. HIGHWAY SAFETY, DEPARTMENT OF — SECTIONS OF AMENDED HOUSE BILL 243, 100 GA, WHICH REMAIN IN FORCE AFTER JULY 1, 1954, ADEQUATELY PROVIDE FOR CONTINUATION OF DEPARTMENT — TO BE ESTABLISHED OCTOBER 2, 1953.
2. THE SECTIONS OF THE BILL WHICH WILL REMAIN IN FORCE AFTER JULY 1, 1954, TOGETHER WITH SECTION 141.03 (O) RC, ADEQUATELY PROVIDE AFTER THAT DATE FOR POSITION, DIRECTOR OF HIGHWAY SAFETY.
3. GOVERNOR HAS POWER TO APPOINT A DIRECTOR SHOULD VACANCY OCCUR AFTER JULY 1, 1954 — APPOINTED TO SERVE AT PLEASURE OF GOVERNOR.

SYLLABUS:

1. The sections of Amended House Bill No. 243, 100th General Assembly, which will remain in force after July 1, 1954 adequately provide for continuation of the Department of Highway Safety which is to be established October 2, 1953.
2. The sections of Amended House Bill No. 243 which will remain in force after July 1, 1954 together with Section 141.03 (O), Revised Code, adequately provide for the position of Director of Highway Safety after that date.
3. Should a vacancy occur in the position of Director of Highway Safety after July 1, 1954, the power to appoint to fill such vacancy is in the Governor, the appointee to serve at the pleasure of the Governor.

Columbus, Ohio, September 16, 1953

Honorable Frank J. Lausche, Governor, State of Ohio
Columbus, Ohio

Dear Sir:

I have your request for my opinion as to the legal effect of the following facts. The One Hundredth General Assembly enacted into law Amended House Bill No. 243 and Amended Senate Bill No. 155. Amended House Bill No. 243 creates a new Department of Highway Safety and is effective October 2, 1953. Among the sections of that bill are Sections 121.02 and 121.03, Revised Code. These sections of the bill read in pertinent part as follows:

Section 121.02 (154-3).

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

"(L) The department of highway safety, which shall be administered by the director of highway safety.

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

Section 121.03

"The following directors of administrative departments shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold their offices during the pleasure of the governor: * * *

"(8) The director of highway safety. * * *"

Subsequent to the enactment and executive approval of Amended House Bill No. 243, Amended Senate Bill No. 155 which creates a new Department of Mental Hygiene and Correction was enacted and passed over the executive veto. Amended Senate Bill No. 155 is effective July 1, 1954. Among the sections enacted by this later legislation are the same Sections 121.02 and 121.03, Revised Code. These sections of Amended Senate Bill No. 155 read in pertinent part as follows:

Section 121.02 (154-3)

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

"(L) The department of mental hygiene and correction, which shall be administered by the director of mental hygiene and correction.

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

Section 121.03:

"The following directors of administrative departments shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold their offices during the pleasure of the governor: * * *

"(8) The director of mental hygiene and correction. * * *"

In short, the legislature by its later and therefore controlling enactment has omitted the language of Section 121.02, Revised Code, creating the Department of Highway Safety, the director of the department, and the language of Section 121.03, Revised Code, providing for appointment of the director. In view of this, your specific inquiry is as follows:

"First, in the absence of further legislation, will the Department of Highway Safety be in existence after July 1, 1954?"

"Second, in the absence of further legislation, will the position of Director of Highway Safety continue to exist after July 1, 1954?"

"Third, if you should rule that the Department of Highway Safety and the position of Director of Highway Safety continue after July 1, 1954, who appoints the Director and what is his term of office?"

"Fourth, if the position of Director of Highway safety does not exist after July 1, 1954, and the Department of Highway Safety continues to exist, who shall perform the duties of Director of Highway Safety after July 1, 1954?"

It must be pointed out that the authority to establish the Department of Highway Safety and to appoint the director of that department after October 2, 1953 is clear. I take it that this authority is recognized by your request. The department obviously may operate without any question as to its authority until the effective date of Amended Senate Bill No. 155, July 1, 1954.

A few further preliminary observations must be made. Article II, Section 16, Ohio Constitution provides in part:

"No bill shall contain more than one subject, which shall be clearly expressed in its title, and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed. * * *"

Amended Senate Bill No. 155 represents the last action of the legislature with respect to Sections 121.02 and 121.03, Revised Code, and that bill is thus controlling in the event of conflict with previous enactments even of the same session of the legislature. *State, ex rel. Guilbert v. Halliday*, 63 Ohio St., 165. Under the Constitution therefore, it is clear that an express repeal of Sections 121.02 and 121.03, Revised Code, as they appear in Amended House Bill No. 243 will be effected by the re-enactment of the same sections in Amended Senate Bill No. 155 when the latter becomes effective on July 1, 1954.

Amended House Bill No. 243 contained some twenty one other sections dealing with the same subject matter which are as follows: Sections 5502.01, 141.03, 4501.02, 4501.04, 4503.04, 4503.10, 4503.21, 4503.22, 4503.26, 4503.37, 4505.14, 4505.17, 4505.03, 4513.37, 4517.10, 5501.02, 5503.01, 5503.03, 5503.05, 5503.20 and 5503.23. These twenty one sec-

tions of the Revised Code which are included in Amended House Bill No. 243 are in no way affected by Amended Senate Bill No. 155 and are therefore without question effective before and after July 1, 1954. These twenty one effective sections not only establish new governmental duties in the Department of Highway Safety, but in addition effectively transfer the entire operation of the State Highway Patrol and the Bureau of Motor Vehicles to the department. Thus the underlying problem which you present is the effect of sheer legislative inadvertence in repealing two out of the twenty three sections of a complete and comprehensive highway control program.

Of course, as in any problem of this sort, we are governed by the intent of the legislature. This intent, however, must be discovered in the effective action taken by the legislature. *Slingluff et al v. Weaver et al.*, 66 Ohio St., 621. Neither I nor a court, as a general rule, can correct a legislative mistake. *The Christ Diehl Brewing Co. et al. v. Schultz*, 96 Ohio St., 27. We are left to interpret that which remains, mistake or not. Obviously if by similar inadvertence all of the sections of Amended House Bill No. 243 had been subsequently re-enacted without reference to the Department of Highway Safety, a complete repeal would have been effected and that department would have suffered a quick demise. Such is not the case here. In spite of its error, we are left to determine the intent of the legislature in effectively enacting the remaining twenty one sections of Amended House Bill No. 243.

1. Will the Department of Highway Safety continue in effect after July 1, 1954 even though Section 121.02, Revised Code, as it applies to that department is repealed as of that date? The provisions of the remaining effective sections of Amended House Bill No. 243 referred to above are determinative of this question. Do those sections *standing alone* effectively provide for such a department? Several of these sections must be considered. Section 5502.01, Revised Code, vests extensive powers and duties in a "department of highway safety". It reads as follows:

"The department of highway safety shall administer and enforce the laws relating to the registration, licensing, sale and operation of motor vehicles and the laws pertaining to the licensing of drivers of motor vehicles.

"The department shall compile, analyse, and publish statistics relative to motor vehicle accidents and the causes thereof, prepare and conduct educational programs for the purpose of pro-

moting safety in the operation of motor vehicles on the highways, assist and encourage the operation of driver training instruction in the public schools and conduct research and studies for the purpose of promoting safety on the highways of this state.”

Section 4501.02, Revised Code, creates a bureau of motor vehicles in a “department of highway safety” and empowers the director of such department to appoint a registrar of motor vehicles. By this same section the issuance of all rules and regulations for administration of the bureau of motor vehicles is made dependent upon the approval of a director of highway safety, and approval by the same official is needed before any personnel can be employed to administer the motor vehicle laws and before any expenses can be incurred. Section 4501.04, Revised Code, specifies that certain revenues be available to defray the expenses of “the department of highway safety.” Section 4503.10 (F), Revised Code, authorizes the registrar to deposit funds in local banks, but again only with the approval of “the director of highway safety” and the deposit is “to the credit of the state of Ohio department of highway safety”. Every person owning a motor vehicle must, under the provisions of Section 4503.21, Revised Code, display on the vehicle a number or registration mark furnished by the “director of highway safety” and the “director of highway safety” is given the sole power under Section 4503.22, Revised Code, to prescribe the color of license plates. Section 4503.26, Revised Code, gives the “director of highway safety” sole power to advertise for and accept bids for the preparation of registration lists and the bids must be opened by the director “*at the office of the department of highway safety*”. (Emphasis added.) Section 4503.37, Revised Code, authorizes the “director of highway safety” together with other officials to enter into reciprocal agreements with other states regulating the use of Ohio highways by vehicles owned in other states. Section 4513.37, Revised Code, provides for filing information relative to certain violations of motor vehicle laws. This information is to be filed with the “department of highway safety” on forms prescribed by the department and the department is charged with the duty of maintaining a file of this information. Section 4517.10, Revised Code, places the motor vehicle dealers’ and salesmen’s licensing board in the “department of highway safety”. Of even more importance, Section 5503.01, Revised Code, creates a state highway patrol in the “department of highway safety”, gives the “director of highway safety” the power to appoint the super-

intendent of the patrol, and makes the director's approval a necessary prerequisite to the appointment of patrolmen. This section together with the following Sections 5503.03, 5503.05, 5503.21 and 5503.23 generally speaking make the whole operation of the state highway patrol dependent upon the department of highway safety. As a final summary it might be noted that these twenty-one sections of Amended House Bill No. 243, which were not disturbed by Amended Senate Bill No. 155, specifically mention the department of highway safety a dozen times and the director of that department some three dozen times.

It is apparent from this examination that the legislature has made extensive provision for a department of highway safety in statutes which will continue in force after July 1, 1954. If this is not the case, let us examine the consequences of the alternative. No unit of state government would have the power or responsibility for enforcement of the laws relating to registration, licensing, sale or operation of motor vehicles. There would in fact be no bureau of motor vehicles, no funds with which to operate such a bureau and no authority to employ personnel even if the bureau did exist. This would in effect mean an end to the entire motor vehicle licensing system in Ohio and the revenues derived therefrom. In addition there would be no state highway patrol in Ohio, for the authority to appoint a superintendent, to appoint patrolmen, to obtain equipment, to employ other personnel, to train men, to conduct driver's license examinations and to conduct driver training schools would cease. These are but the major areas in which some form of anarchy would prevail. Nor would it be possible to conclude that these operations could be continued in the absence of a department of highway safety for aside from the authority given the department there is no independent power granted. These subordinate divisions could not be transferred back to their independent status without statutory authorization which is lacking. If the department fails so do the subordinate divisions.

The force and effect of the remaining sections of Amended House Bill No. 243 can be destroyed only if we were to hold that these sections suffered an implied repeal when the legislature mistakenly effected an express repeal of those portions of Section 121.02 and 121.03, Revised Code, which relate to the Department of Highway Safety. It must be remembered that repeal by implication is never favored. *Ohio v. Dudley*, 1 Ohio St., 437. Upon considering the chaotic consequences therefore it

cannot be said that the legislature intended an implied repeal of the remaining part of Amended House Bill No. 243. Added support for this conclusion is found in the established rule of construction that absurd or unreasonable results are to be avoided where an alternative exists. *Sawyer v. State*, 45 Ohio St., 343.

It is therefore my opinion and you are advised that the sections of Amended House Bill No. 243 which will remain in force after July 1, 1954 adequately provide for continuation of the Department of Highway Safety which is to be established October 2, 1953.

2. The analysis set out above is of course equally applicable to your second question. In fact the force of the reasoning is the greater when the position of director is considered. Although there could hardly be a director without a department, nevertheless, it is the director who is charged with the important powers which make the department and its divisions operative. It is, if anything, clearer therefore that the sections of Amended House Bill No. 243 which provides for the continuation of the Department of Highway Safety after July 1, 1954 provide also for the position of director of that department. One further thing should be noted. Amended Senate Bill No. 155 which effected the inadvertent repeal specifically provides for the salary of the Director of Highway Safety in Section 141.03 (o), Revised Code. This bill being the later enactment, and not taking effect until July 1, 1954, makes doubly clear that the position was to continue beyond that date.

It is therefore my opinion and you are advised that the sections of Amended House Bill No. 243 which will remain in force after July 1, 1954 together with Section 141.03 (o), Revised Code, adequately provide for the position of Director of Highway Safety after that date.

3. The power to appoint the director of highway safety is specifically given to the Governor on the effective date of Amended House Bill No. 243. The problem presented therefore could only arise if a vacancy occurred after July 1, 1954. It would follow, however, that if the legislature has created a department, the functions of which depend upon a director, and a director to head that department, they must have intended that that official could be brought into existence. Conversely, if the inadvertent repeal of Section 121.03, Revised Code, prevents the appointment of a director should a vacancy occur, then it must be said

that the legislature by that repeal intended to negate the entire effect of the remaining sections of Amended House Bill No. 243 as discussed above. This obviously is not the case. The Department of Highway Safety is an integral part of the executive branch of state government. Article III, Section 5, of the Constitution of Ohio vests the supreme executive power of the state in the Governor. The conclusion is therefore apparent that where the legislature creates a position in the executive branch of government and further provides the duties and salary of that position without setting forth the specific means of appointment to the position, the power of appointment comes within the executive authority of the Governor and depends upon that official's pleasure.

It is therefore my opinion and you are advised that should a vacancy occur in the position of Director of Highway Safety after July 1, 1954, the power to appoint to fill such vacancy is in the Governor, the appointee to serve at the pleasure of the Governor.

4. The answers given above make unnecessary a discussion of your fourth question.

Respectfully,

C. WILLIAM O'NEILL
Attorney General