

OPINION NO. 76-079**Syllabus:**

R.C. 111.15, as amended by Am. Sub. H.B. 317, is not applicable to the public colleges and universities, including community colleges and technical colleges, in the State of Ohio.

To: James A. Norton, Chancellor, Ohio Board of Regents, Columbus, Ohio
By: William J. Brown, Attorney General, December 10, 1976

I have before me your request for my opinion as to whether R.C. 111.15, as amended by Am. Sub. H.B. 317, is applicable to the public colleges and universities, including community colleges and technical colleges, in the state of Ohio. Am. Sub. H.B. 317 amended R.C. 111.15 to require that all rules filed pursuant to that section be filed with the director of the Legislative Reference Bureau in addition to the Secretary of State. It further required that all rules previously filed pursuant to R.C. 111.15 be refiled with both the director of the Legislative Reference Bureau and the Secretary of State prior to January 1, 1977, in order to remain effective.

Am. Sub. H.B. 317, which became effective on September 30, 1976, amended R.C. 111.15 to read as follows:

"No rule adopted by any board, commission, department, division, or bureau of the government of the state shall be effective until the tenth day after it is promulgated by the filing of one certified copy thereof in the office of the secretary of state; and one certified copy thereof with the director of the legislative reference bureau. If both copies are not filed on the same day, the rule shall be effective on the tenth day after the day the later filing is made. A rule of an emergency nature necessary for the immediate preservation of the public peace, health, or safety, which shall state the reasons for such necessity shall become effective immediately upon being promulgated as provided in this section.

"No rule of any board, commission, department, division, or bureau of the government of the state shall be effective after January 1, 1977, unless expressly promulgated as provided in this section.

"All rules filed in the office of the secretary of state pursuant to this section shall be recorded by the secretary of state under the title of the board, commission, department, division, or bureau adopting such rule and shall be numbered according to a numbering system devised by the director of the legislative bureau. Such rules shall be public record open to public

inspection. All rules shall be published in the Ohio Administrative Code as provided by chapter 103. of the Revised Code.

"No rule filed pursuant to this section shall be amended except by a new rule, which new rule shall contain the entire rule as amended and shall repeal the rule amended. Such amendatory rules shall be adopted and promulgated in the same manner as provided in this section for the adoption and promulgation of the rules which are thereby amended.

"No repeal of any rule shall be effective until the tenth day after the filing of one certified copy of the order of repeal of such rule with the secretary of state and one certified copy of the order of repeal of such rule with the director of the legislative reference bureau. If both copies are not filed on the same day, the repeal of such rule shall be effective on the tenth day after the day the later filing is made.

"This section does not apply to any order respecting the duties of employees, or to any finding, or to any determination of a question of law or fact in a matter presented to such board, commission, department, division, or bureau.

"This section does not apply to a rule as defined in section 119.01 of the Revised Code."

(Emphasis added.)

Thus your question becomes whether the public colleges and universities, including community colleges and technical colleges, in the state of Ohio are a "board, commission, department, division, or bureau of the government of the state" as those terms are used in R.C. 111.15. This portion of R.C. 111.15 was not amended by Am. Sub. H.B. 317. Therefore R.C. 111.15 is not applicable to any agencies to which it was not applicable prior to the enactment of Am. Sub. H.B. 317.

The General Assembly did not define a "board, commission, department, division, or bureau of the government of the state" in R.C. Chap. 111. Several related terms, however, were defined in R.C. 121.01, which reads as follows:

"As used in sections 121.01 to 121.21, inclusive of the Revised Code:

"(A) 'Department' means the several departments of state administration enumerated in section 121.02 of the Revised Code.

"(B) 'Division' means a part of a department established as provided in section 121.07, of the Revised Code for the convenient performance of one or more of the functions committed to a department.

"(C) 'Departments, offices, and institutions' include every organized body, office, and agency established by the constitution and laws of the state for the exercise of any function of the state government, and every institution or organization which receives any support from the state."

Each state university is governed by a board of trustees and is "a public institution of higher education which is a body politic and corporate." R.C. 3345.011. Similarly, community college districts and technical college districts are governed by boards of trustees, are political subdivisions of the state, and are bodies corporate. R.C. 3354.01(A), 3354.03, 3357.01(B), and 3357.04.

The terms "department" and "division" as defined by R.C. 121.01 do not include these institutions of higher education, and neither, by analogy, would those terms as used in R.C. 111.15. On this point it may be noted that R.C. 121.01(C) defines the terms "departments, offices, and institutions" collectively to include public institutions of higher education. However, the term "institutions" is specifically included in the language so defined. Such is not the case with R.C. 111.15. Nor do I find any definition of "commission" or "bureau", as used in R.C. 111.15, which would make those terms applicable to the situation you describe.

Thus the term "board" is the one term which might bring these institutions within the scope of R.C. 111.15, since each institution has a board of trustees. The key language in R.C. 111.15 becomes the phrase "of the government of the state." Public institutions of higher education, as noted previously, are political subdivisions and bodies corporate and their boards of trustees are concerned only with the operation of that particular institution, not with the government of the state of Ohio as provided in R.C. 111.15. This construction is bolstered by reference to 1941 Op. Att'y. Gen. No. 4043, p. 696, in which my predecessor had occasion to consider the scope and effect of this statute. He said in pertinent part at pp. 698, 699:

The obvious purpose of this law is to provide, in a central place, a complete and duly classified set of all of the rules and regulations of every board, commission, department, division and bureau of the government of the State of Ohio for the use of anyone who may have occasion or need to examine them. Because of the increasing need for the legislature to delegate administrative duties and functions to specialized state boards and commissions, these rules and regulations have become as important as statutory law to those appearing before such bodies.

Finally, it is significant that Am. Sub. H.B. No. 317 did not change the language of R.C. 111.15 to increase the number of bodies required to file copies of rules pursuant to that section. The amendment merely names the Legislative Reference Bureau as a public repository of such rules, in addition to the Secretary of State, with whom R.C. 111.15 had already required that rules be filed.

Therefore, to the extent that rules have not in the past been filed with the Secretary of State pursuant to R.C. 111.15, the General Assembly has apparently concurred and has not seen fit to question the construction given to that section administratively over the past 35 years. On this point see R.C. 1.54, which provides:

A statute which is reenacted or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute.

Furthermore, it is a well recognized common law rule of statutory construction that an administrative construction given a statute over a long period of time may be viewed as persuasive evidence of the proper interpretation, especially where the legislature has subsequently reenacted the language in question without change. Bailey, et al. v. Evatt, 142 Ohio St. 616 (1944); State ex rel. Schweinhagen v. Underhill, 141 Ohio St. 128 (1943); Wadsworth v. Dambach, et al., 99 Ohio App. 269 (1954).

It is my understanding that the institutions with which you are concerned, have not in fact been heretofore required to file copies of their rules with the Secretary of State pursuant to R.C. 111.15. Therefore, I must conclude that a board of trustees of a public institution of higher education, whether a state university or a community or technical college, is not a board, commission, department, division, or bureau of the government of the state and thus not within the jurisdiction of R.C. 111.15.

In specific answer to your question it is my opinion, and you are so advised, that R.C. 111.15, as amended by Am. Sub. H.B. 317, is not applicable to the public colleges and universities, including community colleges and technical colleges, in the State of Ohio.