

OPINION NO. 96-010**Syllabus:**

1. Absent adoption of a rule by a county board of mental retardation and developmental disabilities specifying the day on which its annual organizational meeting is to be held, the board's annual organizational meeting is not one of the "regularly scheduled board meetings" for purposes of the removal provision of R.C. 5126.04.
2. R.C. 5126.04 requires that a member of a county board of mental retardation and developmental disabilities be removed for "the absence of [that] member within one year from either four regularly scheduled board meetings or from two regularly scheduled board meetings if the member gave no prior notice of his absence," regardless of the number of regularly scheduled sessions in excess of ten in which the board meets in a single year, excluding in-service training sessions.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio

By: Betty D. Montgomery, Attorney General, January 22, 1996

You have submitted an opinion request concerning the operation of R.C. 5126.04 with respect to the removal of a member of a county board of mental retardation and developmental disabilities. Your letter states that the Erie County Board of Mental Retardation and Developmental Disabilities holds its organizational meeting on the third Thursday of January of each year for the election of officers and to conduct regular business. It appears that, although

it has been the practice of the board for a number of years to meet on the third Thursday of each month and to elect officers each year at the January meeting, the board has adopted no rule that addresses this custom. Based upon these facts, you ask whether the board's organizational meeting constitutes a regularly scheduled meeting for purposes of R.C. 5126.04, which requires the removal of a board member who misses a certain number of meetings. You also ask what effect postponement of the organizational meeting has upon the removal provisions of R.C. 5126.04. Your final concern is the effect upon the removal requirements of R.C. 5126.04 should the board have more than ten meetings per year.

R.C. 5126.04, which provides generally for the meetings of a county board of mental retardation and developmental disabilities and for the removal of board members, states in pertinent part:

Each county board of mental retardation and developmental disabilities shall hold an organizational meeting no later than the thirty-first day of January of each year and shall elect its officers, which shall include a president, vice-president, and recording secretary. *After its annual organizational meeting, the board shall meet in such manner and at such times as prescribed by rules adopted by the board, but the board shall meet at least ten times annually in regularly scheduled sessions in accordance with [R.C. 121.22], not including in-service training sessions.* A majority of the board constitutes a quorum. The board shall adopt rules for the conduct of its business and a record shall be kept of board proceedings, which shall be open for public inspection.

A board member shall be removed from the board by the appointing authority for neglect of duty, misconduct, malfeasance, failure to attend at least one in-service training session each year, a violation of division (A), (B), (C), or (D) of section 5126.03 of the Revised Code, or upon the absence of a member within one year from either four regularly scheduled board meetings or from two regularly scheduled board meetings if the member gave no prior notice of his absence. This removal provision does not apply to absences from special meetings or work sessions. The board shall supply the board member and his appointing authority with written notice of the charges against the member. The appointing authority shall afford the member an opportunity for a hearing, in accordance with procedures it adopts, and *shall, upon determining that the charges are accurate, remove the member and appoint another person to complete the member's term.* (Emphasis added.)

You are specifically concerned with the portion of R.C. 5126.04 requiring the removal of a board member who, within one year, misses either "two regularly scheduled board meetings" without giving prior notice of his absence or four "regularly scheduled board meetings."

You first ask whether the annual organizational meeting prescribed by the first paragraph of R.C. 5126.04 is a "regularly scheduled board meeting" for purposes of the removal provision of that statute. Concerning the regularly scheduled meetings of a county board of mental retardation and developmental disabilities, R.C. 5126.04 first imposes upon each board a duty to "meet at least ten times annually in regularly scheduled sessions in accordance with [R.C.

121.22],"¹ excluding in-service training sessions. Regularly scheduled board meetings are also dealt with in the second paragraph of R.C. 5126.04, the removal provision. R.C. 5126.04 expressly excludes from the removal provision of that statute "absences from special meetings or work sessions." The term "regularly scheduled board meetings," as used in R.C. 5126.04, is not defined by statute. In interpreting the meaning of terms within R.C. 5126.04, it is necessary to bear in mind the principle that "[s]tatutes authorizing the removal of an incumbent from public office are quasi-penal in character and should be strictly construed." *State ex rel. Stokes v. Probate Court*, 22 Ohio St. 2d 120, 258 N.E.2d 594 (1970) (syllabus, paragraph one). Because a board member's absence from the specified number of "regularly scheduled board meetings" requires that member's removal, the meaning of "regularly scheduled board meetings" must be narrowly construed.

The organizational meeting required by R.C. 5126.04 is regularly scheduled in the sense that R.C. 5126.04 requires such meeting to be held every year at some time in January. In another sense, however, it is not regularly scheduled because it is not required to be held on a specific day or date within that month each year.² *Cf.* R.C. 5715.09 (requiring a county board of revision to meet "annually on the second Monday in January"). In fact, pursuant to R.C. 5126.04, only those meetings of the board conducted *after* its organizational meeting must be conducted "at such times as prescribed by rules adopted by the board." Thus, it appears that all board meetings, except the organizational meeting, are to be scheduled pursuant to board rule. Having provided a mechanism for determining when board meetings, other than the organizational meeting, will be held, the General Assembly has arguably treated the board's annual organizational meeting as something different from "regularly scheduled board meetings." Because it is not clear that the General Assembly intended the board's annual organizational meeting to be included as one of its regularly scheduled meetings, a strict construction of the removal provision of R.C. 5126.04 compels the conclusion that absence from the board's annual organizational meeting is not absence from a "regularly scheduled board meeting" for purposes

¹ R.C. 121.22, Ohio's open meetings law, declares that all meetings of a public body, including a county board of mental retardation and developmental disabilities, are open to the public. R.C. 121.22(C). Pursuant to R.C. 121.22(F), each public body is required to adopt rules that "establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings." Although R.C. 121.22 does not define the term "regularly scheduled meetings" as used in that statute, both 1990 Op. Att'y Gen. No. 90-028 and 1988 Op. Att'y Gen. No. 88-029 concluded that where a statute prescribes a specific day each year on which a public body is to conduct a meeting, such meeting is a "regularly scheduled meeting" for purposes of R.C. 121.22. I note, however, that while a county board of mental retardation and developmental disabilities is also subject to R.C. 121.22, the question you ask does not concern the board's compliance with the open meetings law, but rather what constitute "regularly scheduled board meetings" for purposes of R.C. 5126.04.

² According to the information accompanying your opinion request, although the scheduling of the time and place of monthly board meetings, including the organizational meeting, is reflected in the minutes of one of the board's meetings, it is not clear that the board has complied with either R.C. 121.22(F) or R.C. 5126.04, both of which require the board to adopt various rules concerning its meetings.

of the removal provision of R.C. 5126.04. Accordingly, I conclude that, under this set of facts, the board's annual organizational meeting is not a "regularly scheduled board meeting" for purposes of the removal provision of R.C. 5126.04.³

In light of my answer to your first question, it is not necessary to address your second question concerning the postponement of the board's annual organizational meeting. I turn now to your final question, which asks, "[w]hen a county board of mental retardation and developmental disabilities meets more than ten times annually in regularly scheduled sessions, does the board have a legal obligation to bring charges against a member for missing four regularly scheduled board meetings when that individual has attended at least seven of the regularly scheduled board meetings?"

The nature of the duty to remove a member of a county board of mental retardation and developmental disabilities was addressed in 1989 Op. Att'y Gen. No. 89-057 at 2-243, as follows:

R.C. 5126.04, which sets forth the procedures for removing a county MR/DD board member, imposes a *mandatory duty* upon an appointing authority to remove a county MR/DD board member upon determining, after a hearing, that a charge against such board member is accurate. The removal provision of R.C. 5126.04 contains no exceptions to the mandatory duty imposed upon an appointing authority to remove a county MR/DD board member for failure to attend an in-service training session each year.... I have no authority to read exceptions into the removal provision of R.C. 5126.04. *See Lima v. Cemetery Association*, 42 Ohio St. 128, (1884).... Therefore, I conclude that an appointing authority has a mandatory duty to remove a county MR/DD board member upon determining after a hearing that such board member failed to attend at least one in-service training session each year. (Various citations omitted.)

Although the reason for removal addressed in Op. No. 89-057 differs from the reason about which you ask, the mandatory nature of the duty to remove a board member after a hearing and determination that one of the statutory bases for removal exists applies equally to any of the statutory reasons for which a board member may be removed.

You are concerned about the necessity of removing a board member who is absent from four "regularly scheduled board meetings" in a year where that board has met in more than ten regularly scheduled meetings that year. R.C. 5126.04 grants each county board of mental retardation and developmental disabilities a certain discretion in determining the number of regularly scheduled sessions in which it will meet each year, provided that "the board shall meet *at least ten times annually* in regularly scheduled sessions in accordance with [R.C. 121.22], not including in-service training sessions" (emphasis added). The General Assembly, therefore, requires a county board of mental retardation and developmental disabilities to meet at least ten

³ It is possible, however, that a county board of mental retardation and developmental disabilities has provided, by rule, a specific, time, date, and place for the annual organizational meeting required by R.C. 5126.04. In such a circumstance, the annual organizational meeting might constitute a "regularly scheduled board meeting" as that term is used in R.C. 5126.04. In the situation described in your request, it does not appear that the board has any such rule, and this opinion assumes that there is no such rule.

times each year in regularly scheduled sessions, but authorizes each board to provide by rule for more than ten such meetings each year.

In the same statute, however, the General Assembly specifically provided for the removal of a board member upon "the absence of [that] member within one year from either four regularly scheduled board meetings or from two regularly scheduled board meetings if the member gave no prior notice of his absence." No exceptions from this requirement were made for situations where a board's rules provide for its meeting in more than ten regularly scheduled sessions each year. As stated in *Columbus-Suburban Coach Lines, Inc. v. PUCO*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8, 9 (1969), in determining legislative intent, it is necessary "to give effect to the words used, not to delete words used or to insert words not used." I must conclude, therefore, that the General Assembly intended that R.C. 5126.04 require the removal of a member of a county board of mental retardation and developmental disabilities for "the absence of [that] member within one year from either four regularly scheduled board meetings or from two regularly scheduled board meetings if the member gave no prior notice of his absence," regardless of the number of regularly scheduled sessions in excess of ten in which the board meets in a single year, excluding in-service training sessions.

It is, therefore, my opinion, and you are hereby advised that:

1. Absent adoption of a rule by a county board of mental retardation and developmental disabilities specifying the day on which its annual organizational meeting is to be held, the board's annual organizational meeting is not one of the "regularly scheduled board meetings" for purposes of the removal provision of R.C. 5126.04.
2. R.C. 5126.04 requires that a member of a county board of mental retardation and developmental disabilities be removed for "the absence of [that] member within one year from either four regularly scheduled board meetings or from two regularly scheduled board meetings if the member gave no prior notice of his absence," regardless of the number of regularly scheduled sessions in excess of ten in which the board meets in a single year, excluding in-service training sessions.