

OPINION NO. 82-074**Syllabus:**

1. The term of a community mental health board member expires at midnight on June thirtieth, four years after his July first appointment, if a successor has been appointed and qualified to assume office at the expiration of the member's term.
2. If no successor has been appointed and qualified to assume office at the expiration of an incumbent community mental health board member's term, the incumbent may continue to hold office, pursuant to R.C. 3.01, until a successor has been appointed and qualified.
3. Community mental health board members appointed after July first do not serve for four years after their appointment, but serve only for the time remaining in the unexpired term.

To: Myers R. Kurtz, Director, Department of Mental Health, Columbus, Ohio
By: William J. Brown, Attorney General, September 28, 1982

You have asked me to respond formally to your questions concerning the implementation of the appointment provisions of R.C. 340.02. Your specific questions are as follows:

1. When does a Community Mental Health Board member's term officially end?
2. May a Community Mental Health Board member, whose term has expired continue to serve in an official capacity, pursuant to Ohio Rev. Code 3.01, until a successor has been appointed and taken an oath of office?
3. Does a Community Mental Health Board member, appointed after July 1st of any year, serve a full four-year term?

In order to answer your first question, it is necessary to examine R.C. 340.02, which reads in part that, "[e]ach [community mental health board] member shall be appointed for a term of four years, commencing the first day of July. . . ."¹ From

¹R.C. 340.02 also provides for the staggering of terms with regard to initial appointments to newly established and expanded boards. One-third of initial appointments are for two years, one-third for three years, and one-third for four years. I assume, however, that your questions refer to the full four year terms served by members appointed subsequent to the expiration of these initial appointments.

this language it may be inferred that a board member's term ends at midnight on June thirtieth, four years after his July first appointment. See State ex rel. Bolsinger v. Oridge, 134 Ohio St. 206, 16 N.E.2d 334 (1938) (the two-year term of a public officer which began on January 1, 1936 expired at the close of the day on December 31, 1937); 1959 Op. Att'y Gen. No. 774, p. 477 (when statute provided that the term of an officer was to terminate on February first, the succeeding term began on February second). See also R.C. 1.44; R.C. 1.45. For example, the term of a community mental health board member which began on July 1, 1982, would end at midnight on June 30, 1986.

Implicit in the above conclusion, however, is the assumption that a successor board member has been appointed and is qualified and ready to assume office at the expiration of the incumbent's term. Your second question deals with the situation where four years have elapsed since the incumbent's appointment, and no successor has been appointed to assume office.

As noted in your request, R.C. 3.01 is pertinent to an analysis of this situation. This statute reads: "A person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws of this state." A community mental health board member is a public officer, see 1979 Op. Att'y Gen. No. 79-049 (overruled on other grounds by 1981 Op. Att'y Gen. No. 81-100), and no constitutional or statutory provision of which I am aware indicates that R.C. 3.01 is inapplicable to a community mental health board member. Thus, R.C. 3.01 provides a board member the right to continue in office until his successor is appointed and qualified, even though four years have elapsed since his appointment. See State ex rel. Bolsinger v. Oridge; 1957 Op. Att'y Gen. No. 176, p. 22; 1946 Op. Att'y Gen. No. 749, p. 80. See also State v. Howe, 25 Ohio St. 588 (1874). A person who continues to hold office pursuant to R.C. 3.01 serves as a de jure officer rather than as a mere de facto officer. See State v. Howe; 1946 Op. No. 749. See also 1957 Op. No. 176. The purpose of R.C. 3.01 is to prevent vacancies in office and insure the continuous and efficient conducting of business. State ex rel. Bolsinger v. Oridge; 1946 Op. No. 749. Thus, in response to your second question, I conclude that a community mental health board member may continue to serve in office after his four year term has expired until his successor is appointed and qualified.

Turning to your third question as to whether board members appointed after July first may serve a four year term, I find it evident from the language of R.C. 340.02 that the General Assembly intended July first to be the critical date for the commencement of a board member's term. Board members appointed after July first hold valid appointments. See State ex rel. O'Neill v. Fanning, 134 Ohio St. 383, 17 N.E.2d 740 (1938); 1946 Op. No. 749. However, they do not serve for four years, but serve only for the time remaining in the unexpired term. See 1959 Op. No. 774. If board members were permitted to serve four full years regardless of the date of their appointment, the language of R.C. 340.02 requiring the terms of board members to commence on July first would soon be rendered meaningless.

In conclusion, it is my opinion, and you are advised, that:

1. The term of a community mental health board member expires at midnight on June thirtieth four years after his July first appointment, if a successor has been appointed and qualified to assume office at the expiration of the member's term.
2. If no successor has been appointed and qualified to assume office at the expiration of an incumbent community mental health board member's term, the incumbent may continue to hold office, pursuant to R.C. 3.01, until a successor has been appointed and qualified.
3. Community mental health board members appointed after July first do not serve for four years after their appointment, but serve only for the time remaining in the unexpired term.