

**OPINION NO. 77-073****Syllabus:**

Members of the Board of Tax Appeals serving on October 11, 1976, are not entitled to a higher rate of compensation after that date as a result of Am. Sub. H.B. 920.

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**To: Robert E. Boyd, Jr., Chairman, Board of Tax Appeals, Columbus, Ohio**  
**By: William J. Brown, Attorney General, November 21, 1977**

Your request for my opinion poses the question as to whether members of the Board of Tax Appeals serving on October 11, 1976 were entitled to the higher rate of compensation passed by the Ohio General Assembly after that date as a result of Am. Sub. H.B. 920.

The General Assembly is required to fix the compensation for members of the Board of Tax Appeals. Ohio Constitution Art. II, §20 provides in pertinent part as follows:

The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.

The Supreme Court's consistent interpretation of this language was expressed in State, ex rel. Mikus v. Roberts, 15 Ohio St.2d 253, 257 (1968):

This has been held to prevent any increase in the compensation paid to such an officer during his term of office.

In order to determine whether Art. II, §20 affects members of the Board of Tax Appeals, it is first necessary to examine the powers held by and duties incumbent upon its members to determine if they are officers. Am. Sub. H.B. 920, effective October 11, 1976, reorganized the Department of Taxation in addition to providing for general salary increases for those on the state payroll. That legislation separated the Board of Tax Appeals from the Department of Taxation and established it as an independent agency. While the Board's administrative functions were transferred to the Department of Tax Equalization, the Board, pursuant to R.C. 5703.02, was given the power to hear and determine all appeals from orders, decisions and actions of the state agency responsible for tax administration.

A public officer is one who receives his authority from either the constitution or statute and discharges some function of government. Scotfield v. Strain, 142 Ohio St. 290 (1943). Specifically, it has been held the performance of some executive, legislative or judicial act is a significant indication that one is a public officer. State ex rel. Att'y Gen. v. Jennings, 57 Ohio St. 415 (1893). Because members of the Board of Tax Appeals perform governmental functions of a judicial nature, thus exercising part of the states' sovereign power, they are public officers. Therefore, Art. II, §20 prohibits such members whose terms began prior to the effective date of Am. Sub. H.B. 920 from participating in the increase in compensation mandated therein until the expiration of their terms, unless that act can be considered to have abolished the prior Board and created a new one.

While, as the above discussion indicates, the Board of Tax Appeals was given a new set of duties and relieved of some others, such a reorganization does not for the purpose of Art. II, §20 result in the abolishment of the office. In Donahy v. State ex rel. Marshall, 101 Ohio St. 479 (1920), the Supreme Court observed that:

It is a familiar rule that when a public officer takes office, he undertakes to perform all of its duties, although some of them may be called into activity for the first time by legislation passed after he enters upon his term . . .

Similarly, in State ex rel. Mikus v. Roberts, 15 Ohio St.2d 253 (1966), the court stated that:

A public officer takes his office cum onere, and so long as he retains it he undertakes to perform its duties for the compensation fixed, whether such duties be increased or diminished.

The changing of a public officer's duties does not, therefore, result in the abolishment of one office and creation of another. The officer still serves, for the purpose of Art. II, §20, in the office to which he was originally appointed. Accordingly, if a person is serving on the Board of Tax Appeals on October 11, 1976, the effective date of Am. Sub. H.B. 920, and he continues to serve on the new Board subsequent thereto, there is a continuation of his existing term, and he is not entitled to an increase in compensation.

Therefore, it is my opinion, and you are so advised, that members of the Board of Tax Appeals serving on October 11, 1976, are not entitled to a higher rate of compensation after that date as a result of Am. Sub. H.B. 920.