

OPINION NO. 82-015**Syllabus:**

Pursuant to R.C. 3737.81(A), a member of the State Fire Commission may hold office until the end of his appointed term despite in-term changes in the occupation or position which qualified him for appointment.

To: J. Gordon Peltier, Director, Department of Commerce, Columbus, Ohio
By: William J. Brown, Attorney General, March 22, 1982

I have before me your letter which reads in part:

This is to request an opinion as to whether a member of the State Fire Commission is disqualified from completing his term of office and, therefore, whether he should be replaced, upon a change occurring with respect to his occupation, position, or employment, which results in his no longer belonging to that class of fire service of

March 1982

which he was a member at the time of his appointment, or no longer being a mayor, manager, or member of the legislative authority of a municipality, or no longer being a representative of commerce and industry, the fire insurance industry, the flammable liquids industry, or the construction industry.

R.C. 3737.81(A) provides for the creation of the State Fire Commission, and reads as follows:

There is hereby created the state fire commission consisting of ten members to be appointed by the governor with the advice and consent of the senate. The fire marshal or his chief deputy, a representative designated by the superintendent of public instruction, and a representative designated by the board of building standards shall be ex officio members. Of the initial appointments made to the commission, two shall be for a term ending one year after the effective date of this section, two shall be for a term ending two years after that date, two shall be for a term ending three years after that date, two shall be for a term ending four years after that date, and two shall be for a term ending five years after that date. Thereafter, terms of office shall be for five years, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member shall hold office from the date of his appointment until the end of the term for which he was appointed.

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of his term until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. Members shall be qualified by experience and training to deal with the matters that are the responsibility of the commission. Two members shall be members of paid fire services, one shall be a member of volunteer fire services, two shall be mayors, managers, or members of legislative authorities of municipalities, one shall represent commerce and industry, one shall represent the fire insurance industry, one shall represent the flammable liquids industry, one shall represent the construction industry, and one shall represent the public. At no time shall more than six members be members of or associated with the same political party. Membership on the commission shall not constitute holding a public office and no person shall forfeit or otherwise vacate his office or position of employment because of membership on the commission. (Emphasis added.)

You have observed in your letter that the sentences which are emphasized in the statute quoted above seem to conflict. As an example, under one possible interpretation of R.C. 3737.81(A), if a member of the State Fire Commission ceased to be a member of a paid fire service, but continued to hold office until the end of his appointed term, the Commission would lack the composition required by the statute. In contrast, if an individual became disqualified for membership on the Commission because of such an in-term change in occupation or position, the sentence which provides that "[e]ach member shall hold office. . .until the end of the term for which he was appointed" would apparently be ignored. However, longstanding rules of statutory construction proscribe such disregard of statutory language. Carter v. City of Youngstown, 146 Ohio St. 203, 207, 65 N.E.2d 63, 65 (1946).

It is a settled rule of construction that statutory language should, whenever possible, be given a meaning which will reconcile the various sentences. State ex rel. Myers v. Industrial Commission, 105 Ohio St. 103, 136 N.E. 896 (1922) (syllabus) ("[t]he different sections and parts of sections of the same legislative enactment should if possible be so interpreted as to harmonize and give effect to each and all. . ."). Esber v. New York Life Insurance Co., 10 Ohio Op. 116, 117 (C.P. Stark

County 1937) ("[attach] reasonable meaning. . .to each. . .[sentence], without doing violence to the section as a whole, or to the announced purpose of the act"). While the language of the statute may be considered ambiguous, it is nevertheless presumed that the legislators had a purpose in employing that language. Therefore, one must look to the language used to determine the legislative intent. Batchelor v. Newness, 145 Ohio St. 115, 120, 60 N.E.2d 685, 687 (1945).

The State Fire Commission members, pursuant to R.C. 3737.81(A), are to be appointed to staggered terms. The manifest purpose is to provide the Commission with a measure of continuity which will better enable it to carry out the functions assigned to it, as set forth under R.C. 3737.03.

Following the initial terms, all appointments are to be for a term of five years. The legislature presumably was cognizant of other laws which would affect the classes of individuals selected for membership on the Commission. See State ex rel. Hudson v. Kelly, 55 Ohio App. 314, 319 (Auglaize County 1936) ("a legislature in the enactment of a law is presumed to have had in mind existing laws"). Mayors, managers, and members of municipal legislative authorities are, for example, typically elected or appointed for terms of fewer than five years. See, e.g., R.C. 733.02, 733.24 (mayors of cities and villages are to be elected to four-year terms). Similarly, it may be assumed that the legislators were aware that people, including members of paid fire services, businessmen, and individuals involved in municipal government, retire, and that businessmen often change employment and move on to other positions in commerce and industry. It is reasonable to conclude that, foreseeing such situations, the legislators sought to express their intention to establish continuity on the Commission by providing a scheme of staggered terms, reinforced with the statement that "[e]ach member shall hold office from the date of his appointment until the end of the term for which he was appointed."

This interpretation of legislative intent is supported by the provision of R.C. 3737.81(A) which exempts Commission members from the restrictions pertinent to a public office. It has been held that a public officer "must be qualified to hold his office not only when he is elected or appointed thereto but also throughout his term." State ex rel. Boda v. Brown, 157 Ohio St. 368, 373, 105 N.E.2d 643, 646 (1952); State ex rel. Attorney General v. Orr, 61 Ohio St. 384, 385, 56 N.E. 14, 15 (1899). However, R.C. 3737.81(A), providing that "[m]embership on the commission shall not constitute holding a public office. . .," places Commission members outside the scope of this holding.

R.C. 3737.81(A) also sets forth a detailed scheme for the composition of the State Fire Commission. It provides that two Commission members "shall be" individuals with positions in municipal government; certain others "shall represent" commerce and industry, the construction, fire insurance, or flammable liquids industries, or the public; three "shall be" members of fire services. The statute thus manifests the legislative intention to create a Commission reflecting the varied interests of those most affected by fire safety issues.

As stated above, it is necessary to construe the statutory language in a manner which will harmonize the composition provision with the provision designed to aid continuity on the Commission, and will give effect to each provision. The manifest intent of the composition provision is the legislature's concern that "[m]embers shall be qualified by experience and training to deal with the matters that are the responsibility of the commission." Having this concern in mind, I find both provisions may still be given effect. At the time of his appointment, a member must belong to that class of persons which will fulfill the composition provision set forth in the statute. However, the relevant background and training which qualified a particular person for appointment will clearly remain with the individual despite a change in occupation, employment, or position during his term on the Commission. It is, therefore, reasonable to conclude that the composition provision is satisfied at the time of each individual's appointment to the

Commission. This construction makes it possible to give effect to the provision that each Commission member "shall hold office from the time of his appointment until the end of the term for which he was appointed."¹

Based upon the foregoing, it is my conclusion, and you are advised that, pursuant to R.C. 3737.81(A), a member of the State Fire Commission may hold office until the end of his appointed term despite in-term changes in the occupation or position which qualified him for appointment.

¹Your specific question is whether a change in status as it concerns membership on the commission "automatically" disqualifies the member from serving out the balance of his term or from participating in the affairs of the commission. The foregoing analysis suggests that no such automatic disqualification was intended. There may arise, however, a circumstance in which the member's new status may conflict, in whole or in part, with his membership on the commission. The existence of a conflict of interest, however, is a question of fact that can be resolved only after full disclosure of all the pertinent facts, and is, therefore, outside the scope of this general opinion.