

"A majority of the Commission shall constitute a quorum to transact business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission so long as a majority remains. Any investigation, inquiry or hearing which the commission is authorized to hold or undertake may be held or undertaken by or before any one member of the commission. * * *"

Section 8 of the General Code provides :

"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."

There being no contrary provision in the statutes in respect of the office of member of the Tax Commission, the present incumbent may hold the office until the senator in question qualifies.

Under Section 1465-5 of the General Code, before the senator may accept or qualify as such commissioner, it will be necessary for him to resign as senator.

Specifically answering your questions :

1. The senate has a legal right to confirm one of its members for an appointment to a commission so long as the commission is one which is not created or the emoluments of which shall not be increased during the term for which he shall have been elected to the general assembly.

2. Such appointee, after being confirmed by the senate, has the right to continue as a senator so long as he does not accept, directly or indirectly, the position to which he has been appointed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

99.

THE OHIO SENATE—HAS LEGAL RIGHT TO CONFIRM APPOINTMENT OF A MEMBER OF THE OHIO HOUSE OF REPRESENTATIVES TO THE CIVIL SERVICE COMMISSION—CONFIRMED APPOINTEE MAY CONTINUE AS A MEMBER OF HOUSE OF REPRESENTATIVES SO LONG AS HE DOES NOT ACCEPT APPOINTMENT IN QUESTION.

SYLLABUS:

1. *The Ohio Senate has the legal right to confirm a member of the House of Representatives for an appointment as a member of the Civil Service Commission so long as the office or emoluments thereof are not changed by the present Legislature.*

2. *Such appointee, after being confirmed by the Senate, has the right to continue as a member of the House of Representatives so long as he does not accept the appointment in question.*

COLUMBUS, OHIO, February 24, 1927.

HON. THOS. EDW. BATEMAN, *Clerk of the Senate, Columbus, Ohio.*

DEAR MR. BATEMAN:—I beg to acknowledge receipt of yours of February 23rd, submitting the following questions:

"1. Has the Senate the legal right to confirm a member of the House of Representatives for an appointment as a member of the Civil Service Commission?"

2. Has such appointee, after being confirmed by the Senate, the right to continue as a member of the House of Representatives as long as he does not qualify as a member of such commission?"

Answering your first question :

Upon the assumption that during the years 1927 and 1928 there will be no change in the law creating the Civil Service Commission and no increase in the emoluments of Civil Service Commissioner, the Senate has the legal right to confirm a member of the House of Representatives for an appointment as a member of the Civil Service Commission.

If, however, the present Legislature should materially change the office or increase the emoluments thereof, such appointment and confirmation would be unconstitutional and void, being in contravention of Section 19 of Article II of the Constitution of Ohio, which provides :

"No senator or representative shall, during the term for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this state which shall be created or the emoluments of which shall have been increased during the term for which he shall have been elected."

Answering your second question :

Section 15 of the General Code provides :

"No member of either house of the general assembly except in compliance with the provisions of this act shall :

* * * * *

(3) Accept any appointment, employment or office from any committee or commission authorized or created by the general assembly, or from any executive, or administrative branch or department of the state, which provides other compensation than actual and necessary expenses.

* * * Any member of the general assembly who accepts any such appointment, office or employment shall forthwith resign from the general assembly and in case he refuses to do so, his seat in the general assembly shall be deemed vacant."

So long as the member in question does not *accept*, either directly or indirectly, the appointment to the Civil Service Commission, he has a right to continue as a member of the House of Representatives.

Section 486-3 of the General Code provides in part as follows :

"No commissioner shall hold any other office of profit or trust under the government of the United States, the State of Ohio, or any political subdivision thereof."

Before the member in question could accept or qualify for the office of Civil Service Commissioner, it would be necessary for him to resign as a member of the House of Representatives.

Section 2 of the General Code provides in part as follows :

"Each person chosen or appointed to an office under the Constitution or laws of this state * * * shall take an oath of office before entering upon the discharge of his duties."

Under Section 7 of the General Code, a person appointed to an office who refuses or neglects in all respects to qualify himself for the performance of such duties *within the time prescribed by law*, shall be deemed to have refused to accept the office to which he was appointed.

There is no time limit prescribed for the qualification of an appointee to the Civil Service Commission. I am informed by Mr. Emmons, and the information is confirmed by the Governor's secretary, that the Governor will have no objection to the member finishing the present legislative session as a member thereof. As long as neither the Governor nor the Senate objects, and as long as there remains a quorum on the Civil Service Commission, I do not think the question can otherwise be raised.

However, Section 486-5 of the General Code provides in part:

"Two members of the commission shall constitute a quorum for the transaction of business."

Under Section 8 of the General Code, which provides:

"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."

the present incumbent of the office has the right to hold over until his successor qualifies by taking the oath of office.

Therefore, I answer both of your questions in the affirmative.

Respectfully,

EDWARD C. TURNER,

Attorney General.

100.

DIRECTOR OF HIGHWAYS—APPROVING PROPOSED AGREEMENT BETWEEN FAIRPORT, PAINESVILLE & EASTERN R. R. CO. AND DIRECTOR OF HIGHWAYS FOR CONSTRUCTION OF UNDERGRADE CROSSING.

SYLLABUS:

Approving agreement proposed to be entered into between the Fairport, Painesville & Eastern Railroad Company and the Director of Highways and Public Works for the construction by the railroad company of an undergrade crossing in Inter-County Highway No. 2.

COLUMBUS, OHIO, February 24, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of recent date, to which is attached a form of agreement covering proposed Fairport, Painesville & Eastern Railroad Company Undergrade I. C. H. No. 2, Lake County.

You request my opinion as to your right, under the law, to enter into such a contract. Section 8895 of the General Code provides: