

**OPINION NO. 93-007****Syllabus:**

Where the chairperson of the board of trustees of Youngstown State University resigns as a member of the board during his term as chairperson, R.C. 3356.02 does not prohibit the board of trustees from conducting a second election within that year to select a new chairperson.

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**To: Mark E. Lyden, Chairperson, Board of Trustees, Youngstown State University, Youngstown, Ohio**

**By: Lee Fisher, Attorney General, February 26, 1993**

You have requested an opinion on the following questions:

1. Where the [board of trustees] has held an annual election which resulted in electing a chairperson and a vice-chairperson and, subsequently, during the unexpired term of these officers, a vacancy in either office occurs, does O.R.C. 3356.02 prohibit filling such unexpired term by election ?
2. Does the mandate of O.R.C. 3356.02 to "annually elect...a chairman and vice-chairman" restrict and limit the [board of trustees] to no more than an annual election even if a vacancy is created in term ?

Your questions have arisen because the person elected to serve as chairperson has resigned from the board. For ease of discussion, your questions have been reformulated into the following single question: Does R.C. 3356.02 permit the board of trustees to conduct a second election within a year in order to replace the chairperson who resigned as a member of the board within the year he was elected to serve as chairperson?

Concerning the election of officers of the Youngstown State University board of trustees, R.C. 3356.02 states in pertinent part: "The board of trustees of Youngstown state university *shall annually elect* from their members a chairman and a vice-chairman; and they *may* also appoint a secretary of the board, a treasurer, and such other officers of the university as the interest of the university requires who may be members of the board." (Emphasis added.) R.C. 3356.02, thus, requires two things: first, that the board of trustees select its chairperson and

vice-chairperson by means of election by the members of the board; and, second, that such persons are to serve one-year terms. See generally *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (in statutory construction, the word "shall" is construed as mandatory unless there is a clear and unequivocal legislative intent to the contrary).

You question whether R.C. 3356.02 limits the board's authority to select a chairperson by allowing the board to make such selection only at the annual election required by R.C. 3356.02. The powers of university boards of trustees are interpreted broadly to facilitate the efficient operation of the university. As stated in *Waliga v. Board of Trustees*, 22 Ohio St. 3d 55, 57, 488 N.E.2d 850, 852 (1986): "Any action which is necessary for the proper maintenance and successful operation of a state university is authorized, *unless it is prohibited by statute.*" (Citation omitted; emphasis added.) Because the language of R.C. 3356.02 concerning the annual election of a chairperson is silent as to the procedure to be followed where the chairperson resigns from the board mid-term, that statute does not limit the power of the board of trustees to fill that position other than at the regular annual election. Thus, while R.C. 3356.02 requires the board to hold an annual election for the selection of a chairperson who is entitled to serve for a term of one year, it does not in any way preclude the selection of a chairperson in the event that the person who has been elected to that position is unable to complete his term.

#### Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, where the chairperson of the board of trustees of Youngstown State University resigns as a member of the board during his term as chairperson, R.C. 3356.02 does not prohibit the board of trustees from conducting a second election within that year to select a new chairperson.