

quired by such section, should take formal action on or after March 1 of each year to suspend the licenses of such licensees without the hearing required by Section 1326, General Code.

With respect to the meaning of the phrase "last address," as used in Section 1323-1, *supra*, this question is answered by such section. This section requires licensees to annually register their name and address with the secretary of your board and further requires such licensees in the event of any change in their office address to notify your secretary in writing thereof within ten days after such change takes place. The "last address" to which you are required to send the notices provided by such Section 1323-1 is obviously the last address as appearing upon the records of your board at the time either the first or second notice is required to be sent.

Your remaining questions require no answer in view of my conclusions in answer to your third question.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2751.

KENT STATE UNIVERSITY—WHERE TERM MEMBER BOARD OF TRUSTEES EXPIRES WHEN SENATE IS IN SESSION—INCUMBENT LAWFULLY SERVES UNTIL SUCCESSOR IS APPOINTED, QUALIFIED AND CONFIRMED.

SYLLABUS:

Where the term of a member of the Board of Trustees of Kent State University expires during the time the Senate is in session, the incumbent trustee lawfully continues to serve as a member of such board of trustees until his successor is appointed and qualified and such appointment confirmed by the Senate.

COLUMBUS, OHIO, July 23, 1938.

MR. K. C. LEEBRICK, *President, Kent State University, Kent, Ohio.*

DEAR SIR: This will acknowledge receipt of your communication of recent date which reads as follows:

"In accordance with the following action of the Board, I am respectfully requesting an opinion from your office upon the status of Mr. John R. Williams, a present member of the Board of Trustees, in relation to the newspaper statement we have that Mr. Robert McGhie of Youngstown, has been appointed a member of the Board.

It was moved by Dr. Lake, seconded by Mr. Hanan, that the Board of Trustees request an opinion from the Attorney General on the status of Mr. John R. Williams as a member of this Board of Trustees. Roll was called, Messrs. Hanan, Lake, Smith, Williams, and Zinninger voting, 'Aye.'

Earlier in this year, we had an informal oral opinion from you that Mr. Williams was a member of the Board, for the purpose of signing diplomas and acting as a Trustee at the meetings until his successor was properly appointed and qualified.

At the last meeting, Mr. McGhie was at the University and informed us that he had not yet received his appointment in due form, and we, as a courtesy, had him sit in for part of the Board meeting.

Since Mr. Williams has not resigned, and we have no official information of Mr. McGhie's appointment, and since matters of considerable financial importance are being acted upon by the Board, because of State appropriations and WPA and PWA contracts, it is rather essential that we have an opinion as to the status of Mr. Williams as a Board member, or of Mr. McGhie as his successor. The next meeting of the Board is set for July 23."

Kent State University was established by virtue of the provisions of Section 7901-1, General Code, which authorized "the creation and establishment of one additional state normal school to be located in eastern Ohio."

Section 7901-3, General Code, provides for appointment of the Board of Trustees of Kent State University as follows:

"As soon thereafter as the General Assembly shall appropriate a sufficient amount of money for the purchase of said site and the erection of suitable buildings thereon, the governor shall appoint by and with the advice and consent of the senate five competent persons who shall constitute a board of trustees for the proposed normal school in the eastern portion of Ohio."

Provisions relating to the terms of members of the board of trustees are expressed in the fourth paragraph of Section 7901-4, General Code, in the following language:

"The governor when appointing said board of trustees shall designate one member of the board to serve one year, one to serve two years, and one to serve three years, one to serve four years and one to serve five years and thereafter one trustee shall be

appointed annually for five years for the control and management of said normal school. They shall serve without compensation other than their reasonable and necessary expenses while engaged in the discharge of their official duties. Not more than three members of the board shall be selected from any one political party."

It is obvious from a reading of Section 7901-3, *supra* and the above quoted paragraph of Section 7901-4, *supra*, that provision is made only for appointment of the members of the board of trustees; and that, in the case of expiration of the term of a trustee, no provision is made for holding over until a successor is appointed and qualified.

Section 8, General Code, reads as follows:

"A person holding an office or public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws."

It is to be observed that Section 8, *supra*, is of a general nature; and that, since there is no statutory provision that directly provides for a holding over where the term of a trustee of the University has expired and a new appointment has not been made, the provisions of Section 8, *supra*, are applicable, unless, "otherwise provided in the constitution."

Sections 2 and 3 of Article VII of the Constitution of Ohio, read as follows:

"2. The directors of the Penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trustees of the benevolent, and other State institutions, now elected by the General Assembly, and of such other State institutions as may be hereafter created, shall be appointed by the Governor, by and with the advice and consent of the Senate; and, upon all nominations made by the Governor, the question shall be taken by yeas and nays, and entered upon the journals of the Senate.

3. The Governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified."

It is to be noted: that, Section 2 of Article VII, *supra*, provides that appointments of trustees of state institutions be made by the Governor, by and with the advice and consent of the Senate; that, Section 3 of

Article VII, *supra*, relates to the filling of vacancies; and that, said Sections 2 and 3 are nowise inconsistent with Section 8, General Code.

The only conclusion that can be gained from the provisions of Section 8, *supra*, is, that until the board of trustees of Kent State University have had notification in an official manner that a success to Mr. John R. Williams has been appointed and qualified, the board of trustees have no authority to consider, or recognize, any person other than Mr. John R. Williams as being entitled to serve as a member of the board of trustees of Kent State University for that particular place on the board that Mr. John R. Williams now holds. It is my judgment that the provisions of Section 8, *supra*, are entirely responsive to the question presented in your letter. However, it may be added that no appointment of a trustee to replace Mr. John R. Williams will be valid without the advice and consent of the Senate.

Although your letter does not so state, I am informed that the term of Mr. John R. Williams as a member of the board of trustees of Kent State University expired during the time that the 92nd General Assembly was in session. I understand that the 92nd General Assembly adjourned not "sine die" but with the provision for reconvening at a future day.

The procedure to be followed in making appointments which are subject to "the advice and consent of the senate", is prescribed by Section 12, General Code, which reads as follows:

"When a vacancy in an office filled by appointment of the governor with the advice and consent of the senate, occurs by expiration of term or otherwise during a session of the senate, the governor shall appoint a person to fill such vacancy and forthwith report such appointment to the senate. If such vacancy occurs when the senate is not in session, and no appointment has been made and confirmed in anticipation of such vacancy, the governor shall fill the vacancy and report the appointment to the next session of the senate, and, if the senate advise and consent thereto, such appointee shall hold the office for the full term, otherwise a new appointment shall be made."

It is obvious from a reading of Section 12, *supra*, that a recess appointment can be made only when the vacancy occurs "when the senate is not in session;" that, if the vacancy occurs "during a session of the senate," as was the case herein, it is incumbent upon the governor to "appoint a person to fill such vacancy and forthwith report such appointment to the senate"; and that, if the senate was in session when Mr. John R. Williams' term expired, and the governor failed to make an appointment for the new term, the governor cannot thereafter make a temporary appointment in recess.

In an opinion appearing in Opinions of the Attorney General for the year 1923, Volume I, page 245, it was held in the second branch of the syllabus as follows:

"2. When a vacancy occurs in the office of member of the Public Utilities Commission during a session of the senate, the governor is without authority to make a recess appointment, and a person who would be appointed by the governor under such circumstances could not lawfully assume the office. It is only in cases when a vacancy occurs when the senate is not in session, that a valid recess appointment may be made under Section 12 of the General Code."

I have considered carefully the reasoning by which such conclusion was reached and concur therein.

Therefore, in specific answer to your question, it is my opinion that Mr. John R. Williams who has continued to exercise the duties of his office as a member of the board of trustees of Kent State University after the expiration of the term of his original appointment, can lawfully continue to serve as a member of such board of trustees until his successor is duly appointed and qualified.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2752.

APPROVAL, ABSTRACT OF TITLE AND OTHER INSTRUMENTS, STATE OF OHIO THROUGH PRESIDENT AND TRUSTEES OF OHIO UNIVERSITY, ATHENS, OHIO, PROPOSED PURCHASE FROM MINNIE B. HOTTEL, JENNIE ANNIN, LENA A. POWERS, BESSIE DOHENY, EDWARD J. DOHENY, ELIZA GRAHAM AND GROVER C. GRAHAM, DESCRIBED PARCELS OF LAND, CITY OF ATHENS, ATHENS COUNTY, OHIO, PURCHASE PRICE, \$20,000.00, USE WITHIN PURVIEW OF SECTION 7931-2 G. C.

COLUMBUS, OHIO, July 23, 1938.

MR. GEORGE C. PARKS, *Secretary, Board of Trustees, Ohio University, Athens, Ohio.*

DEAR SIR: There have been submitted for my examination and approval an abstract of title and warranty deed relating to the proposed