

256.

SECRETARY—UNDER SECTION 4061 G. C. IT WOULD NOT BE LEGAL FOR BOARD OF PARK COMMISSIONERS TO FIX TERM AT THREE YEARS.

SYLLABUS:

Under section 4061 G. C., it would not be legal for a board of park commissioners to fix the term of its secretary at three years.

COLUMBUS, OHIO, April 23, 1923.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This department is in receipt of your recent communication as follows:

“Section 4061 of the General Code provides that:

‘The board may employ a secretary, general superintendent, engineer, clerks and such other necessary employes for carrying into effect the purposes of its creation and shall fix the rate of compensation and term of service of its employes.’

“Under the provisions of sections 4053 to 4055, General Code, a new member of the board of park commissioners is appointed each year, which would seem to necessitate reorganization of the board and appointment of employes each year.

“*Question:* Under the provisions of said section 4061 G. C., would it be legal for a board of park commissioners to fix the term of its secretary at three years?”

In answering your question it will be necessary to consider section 4054 General Code, which provides:

“If a majority of the electors voting at such election on the questions vote in favor of the appointment of a board of park commissioners, the mayor shall immediately appoint three electors of the city as members of such board, to be known as the board of park commissioners. Such members shall be appointed for terms of one, two and three years, respectively, and their successors shall be appointed for terms of three years. In case of the death or resignation of a member of such board, the mayor shall immediately appoint a successor to fill the vacancy for the unexpired term. The members of the board shall serve without compensation. The mayor may remove, with the consent of the city council, a majority of the members elected thereto concurring, any member of such board for incompetency or official misconduct.”

According to the above section, the term of one member of the board expires every year. This will necessitate the reorganization of the board each year. In other words, the life of the board is for one year and then the board goes out of existence and a new board comes in and organizes by the election of officers.

Section 4061, General Code of Ohio, provides:

"The board may employ a secretary general superintendent, engineer, clerks and such other necessary employes for carrying into effect the purposes of its creation; and shall fix the rate of compensation and term of service of its employes."

This section grants the board power to employ a secretary and fix the compensation and the term of service of such secretary. You will also observe that the statute does not fix a definite term for the services of such secretary, nor is there any provision protecting such secretary from summary dismissal at any time.

Any such grant of power to a board, commission, officer or corporation must be strictly construed, for the language granting such power is also a limitation on the power.

In the case of *Treadway v. Commissioners*, 11 O. S., p. 183, it was held:

"The board of commissioners of a county is a quasi corporation, a local organization which, for purposes of civil administration, is invested with a few of the functions characteristic of a corporate existence. A grant of powers to such a corporation must be strictly construed. When acting under a special power, it must act strictly on the conditions under which it is given."

In the case of *Commissioners v. Ranck*, 9 O. C. C. Rep., p. 301, it was held:

"A contract for the employment of janitors made by a board of county commissioners, for a period of time extending beyond the time when a change is certain to occur in the persons composing the board, unless made in good faith, in the interest of the public and for a time reasonable under the circumstances, is against public policy, and void."

It has been held by a former Attorney General in Attorney General's Reports for 1913, p. 1113:

"The general rule of law is, that when the statutes authorize the employment of anyone to render services to the public, and no definite term is fixed, such persons hold their positions only during the will of the appointing officer or board."

It would seem from a general review of the decisions of the court that where no definite term is specified by statute, said term of employment is during the will of the appointing officer or board. It certainly cannot be said that the will of the board would extend beyond the time for which the board is in existence.

It is the opinion of this department that under section 4061, General Code, it would not be legal for a board of park commissioners to fix the term of the secretary at three years.

Respectfully,

C. C. CRABBE,
Attorney General.