

OPINION NO. 83-007**Syllabus:**

1. A member of a metropolitan housing authority, appointed by the mayor of the most populous village in the district pursuant to R.C. 3735.27, may hold office until the end of his appointed term despite in-term changes in the appointing power.
2. A member of a metropolitan housing authority, appointed by the mayor of a village without a charter provision purporting to provide for the recall of housing authority members, may not be removed from office by recall election.

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 10, 1983

I have before me your request for an opinion of the Attorney General regarding the following questions:

1. Does a member of the Metropolitan Housing Authority, appointed pursuant to Section 3735.27 of the Revised Code of Ohio, continue in office for the duration of the term, or does the cooperation agreement executed by a Village of greater population density during the term of appointment and by the appointing Village, terminate the terms of the less populous Village appointee as of the time the cooperation agreement of the more populous Village is executed?
2. Is an appointee by a Village pursuant to Section 3735.27 of the Ohio Revised Code subject to recall?
3. If the Answer to question 2 is yes, what political subdivision or electorate has the right to cast ballots for the recall?

The above questions are based on the following set of facts:

1. The Village of Aquilla, Geauga County, Ohio, executed a cooperation agreement with the Geauga Metropolitan Housing Authority on the 15th day of November, 1969.
2. Pursuant to Section 3735.27 of the Revised Code of Ohio, two members were appointed by the Village of Aquilla to the Metropolitan Housing Authority, to wit: [one member], whose term expires April 5, 1986 and [another member], whose term expires April 5, 1985.
3. On June 29, 1981, the Village of Chardon, Geauga County, Ohio executed a cooperation agreement with the Geauga Metropolitan Housing Authority.

4. The Village of Chardon, Ohio, has the greatest population of any Village which has executed a cooperation agreement.
5. The Geauga Metropolitan Housing Authority is in the midst of construction of housing for the elderly located within the Village of Chardon, Ohio.
6. The Village of Chardon, Ohio, has no representation on the Board of the Metropolitan Housing Authority.

The cooperation agreement executed between the Village of Chardon and the Geauga Metropolitan Housing Authority on June 29, 1981, is silent concerning the termination of the terms of any of the members of the Geauga Metropolitan Housing Authority. The agreement serves to incorporate the Village of Chardon into the Geauga Metropolitan Housing Authority, and sets forth the obligations and duties of the two parties with respect to the financing, taxing, zoning, and property rights of housing projects to be developed.

R.C. 3735.27¹ authorizes the creation of metropolitan housing authorities, provides for the appointment of members, fixes the terms of appointment, and designates who is eligible for appointment. The statute reads, in part, as follows:

A certified copy of the resolution of the [State Board of Housing], declaring the existence and boundaries of a housing authority district, shall be immediately forwarded to each appointing authority. A housing authority shall consist of five members, who shall be residents of the territory embraced in such metropolitan housing authority district. One member shall be appointed by the probate court, one member by the court of common pleas, one member by the board of county commissioners, and two members by the mayor of the most populous city in the territory included in said district, in accordance with the last preceding federal census. At the time of the initial appointment of the authority, the member appointed by the probate court shall be appointed for a period of four years, the appointee of the court of common pleas for three years, the appointee of the board of county commissioners for two years, one appointee of the mayor for one year and one appointee of the mayor for five years. Thereafter all members of the authority shall be appointed for five-year terms and vacancies due to expired terms shall be filled by the same appointing powers.

¹ R.C. 3735.27 has been amended by Am. Sub. S.B. 72, 114th Gen. A. (1982-83) (eff. March 15, 1983). The amendment divides the current statute into three divisions, (A), (B) and (D), and adds new provisions in division (C).

Division (C) makes substantial changes in the current provisions for metropolitan housing authority districts which contain populations of at least one million. In housing authority districts with the requisite population the following changes apply: (1) terms of the five authority members, following the initial terms, are reduced from five to three years; (2) two of the five members are appointed by the municipal legislative authority of the most populous city in the territory included in the district, the initial appointment of one member being for three years, and the initial appointment of the other member being for one year; two of the members are appointed by the chief executive officer of the most populous city in the territory included in the district, the initial appointment of one member being for three years, and the initial appointment of the other member being for one year; and the fifth member is appointed by the chief executive officer of the city in the district which has the second highest number of housing units owned or managed by the authority, with the approval of the municipal legislative authority of that city, the initial appointment being for three years; and (3) at least one of the appointees of the chief executive officer of the most populous city in the territory must be a resident of a dwelling unit owned or managed by the housing authority, but the resident appointees may not constitute a majority of the members of the authority.

Specifically, your first question asks whether the addition of a more populous village to a housing authority serves to terminate the term of a member appointed by the mayor of the previously most populous village under R.C. 3735.27. R.C. 3735.27 does not expressly authorize appointment of a member by the mayor of a village. Rather, it provides that two members be appointed by the "mayor of the most populous city in the territory included in said district, in accordance with the last preceding federal census." I note, however, that where there are no cities within the territorial limits of a housing authority, R.C. 3735.27 has been construed to grant the mayoral power of appointment to the mayor of the most populous village within the territorial limits of that housing authority. One of my predecessors, in 1967 Op. Att'y Gen. No. 67-065, addressed such a situation and concluded in the syllabus:

Where the State Board of Housing has created a metropolitan housing authority pursuant to Section 3735.27, Revised Code, and there is no city in existence within the territorial limits of such housing authority, the two members of the authority normally appointed by the mayor of the most populous city in the territory may be appointed by the mayor of the most populous village in the territory included in the housing authority district.

I agree with this interpretation of R.C. 3735.27, and, in the instant matter, conclude that the power of appointment properly lies with the mayor of the most populous village within the territorial limits of the housing authority.

Next, I turn to the question whether those mayoral appointees may serve out their terms if a more populous village joins the authority. The answer to this question is to be found by construing the legislative intent of R.C. 3735.27. See Stewart v. Trumbull County Board of Elections, 34 Ohio St. 2d 129, 296 N.E.2d 676 (1973); Covert v. Industrial Commission, 139 Ohio St. 401, 40 N.E.2d 672 (1942). The statute provides that, upon the creation of a metropolitan housing authority, the initial appointments to that housing authority are as follows: the appointment by the probate court is for four years; the appointment by the court of common pleas is for three years; the appointment by the board of county commissioners is for two years; and one of the appointments by the mayor is for one year, and the other appointment by the mayor is for five years. All subsequent appointments of a housing authority member are required to be for five-year terms. The reasonable conclusion to be drawn from the staggered terms of housing authority members is that the legislature intended to provide housing authorities with a measure of continuity to better enable them to carry out their statutory functions. See 1982 Op. Att'y Gen. No. 82-015.

The legislature, in fixing the length of terms of appointees to housing authorities at five years, is presumed to have known that the lengths of terms of appointees did not coincide with the lengths of terms of the several appointing powers. See Op. No. 82-015. See also State ex rel. Hudson v. Kelley, 55 Ohio App. 314, 9 N.E.2d 746 (Auglaize County 1936). Probate judges, court of common pleas judges, county commissioners, and mayors are not typically elected or appointed for terms of five years. See R.C. 305.01 (fixing length of terms of county commissioners at four years); R.C. 733.02 and 733.24 (fixing length of terms of mayors of noncharter cities and villages at four years); R.C. 2101.02 (fixing length of terms of probate judges at six years); R.C. 2301.01 (fixing length of terms of court of common pleas judges at six years). Nevertheless, R.C. 3735.27 is silent concerning the replacement of appointees except as to "vacancies due to expired terms." The implication of the language of R.C. 3735.27 is that the legislature intended for all members of housing authorities to serve out their full five-year terms irrespective of changes in the appointing powers. See, e.g., Op. No. 82-015 (syllabus) ("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").

This interpretation of the provisions of R.C. 3735.27 is further supported by language contained in the recent amendment to the statute, outlined in footnote 1, supra. For certain housing authorities the new provisions change the length of terms of members of the housing authorities, the appointing powers, and the qualifications of the members. However, the amendment expressly provides that

the changes with regard to a particular position are not to be instituted until after the expiration of the term of a member appointed prior to the effective date of the amendment. This language evidences an intent on the part of the legislature to preserve the continuity of housing authorities by having present members serve out their full terms, which are not to be terminated prematurely because of in-term changes in the appointing powers. See generally 1981 Op. Att'y Gen. No. 81-100 (discussing expectancy of full service of a board member who is appointed for a term of years).

I conclude, therefore, that a member of a metropolitan housing authority appointed, pursuant to R.C. 3735.27, by the mayor of the village in the district which was most populous at the time of the appointment may serve out his full term, irrespective of changes in the mayoral appointing power as a result of the addition of a more populous village to the district.

Your second question asks whether a mayoral appointee to a metropolitan housing authority is subject to recall. It is my understanding that the Village of Chardon has a charter form of government, adopted pursuant to Ohio Const. art. XVIII, §7, which provides for the recall of only elective officers of the municipality, and the Village of Aquilla has a statutory form of government, organized pursuant to R.C. Chapter 731, which does not provide for the recall of public officials. Since Chardon does not have provisions authorizing the recall of any public officials other than elective officers of the municipal corporation, and Aquilla has no recall provision whatsoever, this opinion will not address the question of whether a municipal corporation, by virtue of its power of appointment, could provide in its charter for the recall of its appointees to a metropolitan housing authority, see State ex rel. Hackley v. Edmonds, 150 Ohio St. 203, 80 N.E.2d 769 (1948); State ex rel. Frankenstein v. Hillenbrand, 100 Ohio St. 339, 126 N.E. 309 (1919) (syllabus, paragraph one) (charter municipalities have "the power to prescribe the manner of the selection of their own purely municipal officers" (emphasis added)); rather, this opinion will be limited to the inquiry of whether metropolitan housing authority members may be recalled under existing law, in the absence of any relevant charter provision.

The question whether a public official of a county is subject to recall was addressed in an opinion of one of my predecessors wherein it was determined that a county officer could not be recalled. 1977 Op. Att'y Gen. No. 77-101. Therein it was stated at 2-334 that, "[w]hile all political power has been conferred upon the people of this state, the people have undertaken to limit this power with respect to the removal of public officers." This limitation on the power to remove public officers is found in Ohio Const. art. II, §38, which provides that the removal of public officers may be accomplished, apart from the methods authorized by the Constitution, see Ohio Const. art. II, §§23, 24 (providing for the impeachment and conviction of the governor, judges, and all state officers by the legislature); Ohio Const. art. IV, §17 (providing for the removal of judges by concurrent resolution of both houses of the General Assembly), only upon complaint and hearing. See R.C. 3.07-10. That such a result was intended was evidenced by the fact that, at the Constitutional Convention of 1912, after a "heated debate," a proposal to write a recall provision into the Constitution of Ohio was rejected. State ex rel. Hackley v. Edmonds, 150 Ohio St. at 217, 80 N.E.2d at 775.

It is my understanding that the only statute providing for the recall of public officials is R.C. 705.92. The statute is expressly limited to elective officers of municipal corporations, and has been upheld on the theory that the home rule power of municipalities conferred by Ohio Const. art. XVIII, §§3 and 7, vests in the municipalities a power to establish procedures for the recall of their officers. See State ex rel. Lockhart v. Boberek, 45 Ohio St.2d 292, 345 N.E.2d 71 (1976) (holding that the provisions of R.C. 705.92, permitting recall of the elective officers of a municipal charter, go into effect only to the extent that they have been adopted as part of a home rule charter); State ex rel. Hackley v. Edmonds. Ohio Const. art. II, §38 serves to prohibit recall in other instances, since the requirements of complaint and hearing would not be satisfied.

It is clear that R.C. 705.92 does not authorize the recall of a member of a metropolitan housing authority, and that no charter provision purports to provide

such authority in the instant case. I conclude that, in the situation you have presented, a member of a metropolitan housing authority may not be removed from office by recall election.

Since I have answered your second question in the negative, I need not address your third question concerning who has the right to cast ballots for a recall.

Thus, it is my opinion, and you are so advised, that:

1. A member of a metropolitan housing authority, appointed by the mayor of the most populous village in the district pursuant to R.C. 3735.27, may hold office until the end of his appointed term despite in-term changes in the appointing power.
2. A member of a metropolitan housing authority, appointed by the mayor of a village without a charter provision purporting to provide for the recall of housing authority members, may not be removed from office by recall election.