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SYLLABUS :

1. The term of office of a state official within the purview of Section 115.29, Revised Code, is that fixed period of time set by the constitution or by statute for the particular office which he holds, and the procedure of that section should be invoked each time such a term of office expires, regardless of whether the incumbent of the office has been re-elected to serve in the next term for that office.

2. Where under Section 115.29, Revised Code, not more than twenty nor less than ten days prior to the expiration of the term of office of a state official, an accountant is sent to the office of the official to examine the transactions of said official during his term in office, said examination is limited to the period set by the constitution or by statute as the term of office of said official.

3. The term of office of the present auditor of state is the two-year term provided by Section 2 of Article III, Ohio Constitution, which term of office expires on January 14, 1963, and the examination of the transactions of said auditor under Section 115.29, Revised Code, is limited to transactions made during that two-year term.

Columbus, Ohio, January 8, 1963

Hon. Michael V. DiSalle, Governor, State of Ohio
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“It is respectfully requested that you give us your interpretation of the following language in the second paragraph of Section 115.29 relating to the period of time to be covered by the audit provided for in that section :

“Such accountant shall examine the transactions of such state official during *his term in office . . .*”

(Emphasis added)

Section 115.29, Revised Code, to which you refer, reads in its entirety as follows :

“Not more than twenty nor less than ten days prior to the expiration of *the term of office* of any state official who is the head of a department, the auditor of state shall send an accountant to the office of such retiring state official to make an inventory of all properties, supplies, furniture, credits, and moneys, and any other thing belonging to the state, which it is the duty of such retiring official to turn over to his successor in office or pay into the state treasury. When such inventory has been made, such accountant shall prepare a schedule thereof, and sign it as such state accountant. One copy of such schedule shall be delivered to such retiring state official, one copy to his successor in office, one copy to the governor, one copy to the auditor of state, and one copy to the attorney genreal.

“Such accountant shall examine the transactions of such state official *during his term in office*, and make a statement thereof, in writing, to be included in such report. Such statement shall show what sums of money remain in the hands of such retiring state official at the time of the expiration of his office which he is to turn over to his successor in office or pay into the state treasury.

“When the retiring state official is the auditor of state, an accountant shall be employed by the governor to perform the duties and make the report as provided in this section, so far as such examination concerns the transactions of the retiring auditor of state. Such accountant shall be paid out of the fund provided for the bureau of accounting.” (Emphasis added)

Also related, is Section 115.30, Revised Code, which provides:

“When any department or institution of this state is controlled or managed by a board composed of two or more members and one of the members of such board retires from office, the transactions of such department or institution shall be examined as provided in section 115.29 of the Revised Code.”

The above provisions of law were enacted originally in 1910 as Sections 273-1, 273-2, 273-3, and 273-4, General Code (101, Ohio Laws, 213). In the code revision of 1953, Sections 273-1, 273-2, and 273-3, General Code, were recodified as Section 115.29, Revised Code, and Section 273-4, General Code, was recodified as Section 115.30, Revised Code. (House Bill No. 1 of the 100th General Assembly.) Although some minor language changes were made in the recodification, no substantive changes were made in the law, and I thus do not deem it necessary for the purposes of this opinion to set forth the law as previously existing.

It is my understanding that your question pertains to the present auditor of state, who has served in that capacity during the years January 1, 1953 to January 1, 1963. He was elected in 1952 for the four-year term beginning in January, 1953, and ending in January, 1957; he was elected in 1956 for the four-year term beginning in January, 1957, and ending in January, 1961; and he was elected in 1960 for the two-year term beginning in January, 1961, and ending on January 14, 1963. He did not run for reelection to the office of auditor in the 1962 election, and another person will assume the duties of that office on January 14, 1963, for the four-year term expiring in January, 1967.

The present auditor has thus served ten years in that capacity, but during that period has served in three separate terms of office—two four-year terms and one two-year term. Your request raises the question whether the examination of the auditor's office, as required by Section 115.29, *supra*, should encompass all of the ten years during which the present auditor served, or only the two years constituting his present term of office.

Under Section 115.29, *supra*, the accountant is to be sent to the particular office not more than twenty, nor less than ten days prior to the expiration of the *term of office* of the state official concerned. As to the meaning of the word “term,” it is stated in 43 American Jurisprudence, 10, Section 149:

“The connotation of ‘term’ as applied to an office is that of a fixed and definite period. The term is distinct from the ‘tenure’ of an office.”

Also, in the case of *State, ex rel., v. Toledo*, 142 Ohio St., 123, in the opinion by Bell, J., it is stated at page 129:

“Tenure is the right to hold office for an indefinite time.
“Term denotes a period of time within fixed limits.”

The term of office of a state official is, therefore, that fixed period of time set by the constitution or by statute for the particular office concerned, and I am of the opinion that “term of office” as used in the first sentence of Section 115.29, *supra*, refers to such a fixed period of time. It thus follows that the procedure of said Section 115.29 should be invoked every time such a term of office expires, regardless of whether the incumbent of the office has been reelected to serve in the next term for that office, and that an examination made pursuant to that section is limited to the term of office in which the state official is serving.

It is true that other provisions of Sections 115.29 and 115.30, *supra*, might possibly raise a question as to the exact intent of the legislature in enacting these sections of law. Here I refer to the words “such retiring state official” and “one of the members of such board retires from office”; and to the fact that the property, etc., is to be turned over to “his successor in office.” Also, a copy of the schedule prepared under the section is to be delivered to the “successor” as well as the state official whose term is expiring. Regarding such provisions, the view might be taken that the procedure of the section is to be followed only where a state official ends his term of office and is not reelected to serve in the next term, in which case the examination would cover all of the previous time served by said official in that office, whether in one, or more than one, term. In this regard, there is some evidence that past examinations of the transactions of some state officials who served more than one term in office have covered the entire time that they served, rather than just the last term of office. I am also aware that my above interpretation of the law, that the procedure of Section 115.29, *supra*, should be followed each time a *term of office* expires, has apparently not previously been followed in this state.

On the other hand, however, an officer finishing out a term of office can be said to be retiring from that term even though he has been reelected

to serve a new term. Also, where such an officer is elected to a new term, he is elected to succeed himself, and thus does have a successor in office. It follows, therefore, that all of the provisions of said section may be read to conform with the conclusion which I stated earlier; and while the procedure of Section 115.29, *supra*, may not have been applied at the expiration of all terms in the past, I note that this instance appears to be the first time that a question as to the proper procedure to follow has been raised.

Further, it would appear to have been the intent of the legislature in enacting the law in question to provide a procedure for regular examinations of state offices as to property, etc. Under the theory that an office is not examined where the incumbent has been reelected to a new term, it would be possible that an office could go without examination for ten or twenty years, or more (which would happen if one person were elected for several consecutive terms). Under the conclusion that each office is examined at expiration of term, however, provision is made for a regular examination, and I am inclined to the view that this was the intention of the legislature in enacting this law.

Accordingly, as to the specific question, I am of the opinion that under Section 115.29, *supra*, the accountant employed by the governor is to be sent to the office of the auditor of state not more than twenty nor less than ten days prior to the expiration of the *term of office* of said auditor of state, and is to examine the transactions of said auditor during this *term of office*. As to the present situation, it appears clear that the *term of office* of the present auditor of state is the two-year term provided by Section 2 of Article III, Ohio Constitution, which term of office expires on January 14, 1963, and that the accountant appointed by the governor is thus limited to examining the transactions of the auditor made during that two-year term.

In conclusion, it is my opinion and you are advised:

1. The term of office of a state official within the purview of Section 115.29, Revised Code, is that fixed period of time set by the constitution or by statute for the particular office which he holds, and the procedure of that section should be invoked each time such a term of office expires, regardless of whether the incumbent of the office has been reelected to serve in the next term for that office.

2. Where under Section 115.29, Revised Code, not more than twenty nor less than ten days prior to the expiration of the term of office of a state official, an accountant is sent to the office of the official to examine the transactions of said official during his term in office, said examination is limited to the period set by the constitution or by statute as the term of office of said official.

3. The term of office of the present auditor of state is the two-year term provided by Section 2 of Article III, Ohio Constitution, which term of office expires on January 14, 1963, and the examination of the transactions of said auditor under Section 115.29, Revised Code, is limited to transactions made during that two-year term.

Respectfully,

MARK McELROY

Attorney General