

## OPINION NO. 70-132

**Syllabus:**

A board of county commissioners does not have the power to rescind its election of a president pursuant to Section 305.05, Revised Code, and any attempt at such a rescission is invalid.

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**To: David M. Griffith, Trumbull County Pros. Atty., Warren, Ohio**  
**By: Paul W. Brown, Attorney General, September 15, 1970**

I have before me your request for my opinion on the following questions:

"1. Can the County Commissioners subsequent to the January organizational meeting rescind the motion making one of their members President of the Board of County Commissioners?

"2. In the event the motion rescinding a prior motion electing one of the County Commissioners as President is valid, does the Vice President automatically assume the position as President?"

Section 305.05, Revised Code, is applicable and reads as follows:

"The board of county commissioners shall organize on the first Monday of January of each year, by the election of one of its members as president for a term of one year. The member so elected shall preside at all regular and special sessions of the board. If the position of president becomes vacant during the year, the board shall select one of its members to preside."

The power of a county board to rescind its appointment of an officer is dealt with in 20 C.J.S. 873, Section 19, where it is stated that:

"While it has been held that a board is not prohibited from rescinding or revoking at will its action in appointing an officer, it has also been held that, where the term of an officer is definitely fixed by statute, the county board may not rescind either its original appointment, or an appointment to fill a vacancy."

The case of Weir v. The State, ex rel. Axtell, 96 Ind. 311 (1884), is cited to support this rule with the rationale that:

"\* \* \* An officer whose term is designated by statute takes the office for that term, and does not hold it at the pleasure of the appointing power.  
\* \* \*"

In Ohio, it is a well established doctrine that the powers granted to the board of county commissioners must be construed

strictly. See The State of Ohio ex rel. Daniel H. Treadwell v. The Commissioners of Hancock County, 11 Ohio St. 183, 190 (1860) and Commissioners of Delaware County v. Hiram G. Andrews, 18 Ohio St. 49, 64 (1868). As stated above, Section 305.05, supra, provides that a president is to be elected for a term of one year. However, if a power of rescission were recognized, a board of county commissioners could end its president's term at any time by simply rescinding their earlier action of electing him. This would be inconsistent with the statutory provision that the term be for one year. That provision is, in effect, a restriction of the board's power to arbitrarily terminate, by rescission, its president's term. Therefore, a strict construction of the powers provided a board of county commissioners by Section 305.05, supra, requires that the rule set forth in 20 C.J.S. 873, Section 19, be applied to the present situation to preclude a power of rescission.

It is therefore my opinion, and you are advised that a board of county commissioners does not have the power to rescind its election of a president pursuant to Section 305.05, Revised Code, and any attempt at such a rescission is invalid.