



Ohio Elections Commission
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October 9, 1986

ADVISORY OPINION NO. 86-1

Syllabus: The Ohio Building Authority is a "board or commission" within the meaning of those terms as used in division (K) of Revised Code section 3517.13.

TO: Michael J. Dorrian, Executive Director, Ohio Building Authority:

You have requested an opinion on the following question:

Is the Ohio Building Authority a "board or commission" within the meaning of those terms as used in division (K) of Revised Code section 3517.13?

Revised Code section 152.01 creates the Ohio Building Authority. It provides in part as follows:

(A) There is hereby created the Ohio building authority, consisting of five persons, residents of the state, appointed by the governor with the advice and consent of the senate. Not more than three members of the authority shall belong to or be affiliated with the same political party. The authority is a body both corporate and politic of this state; and it performs essential governmental functions of this state. It may, in its own name, sue and be sued, enter into contracts, and perform all the powers and duties given to it by Chapter 152 of the Revised Code.

(B) . . . Thereafter, terms of office shall be for six years, commencing on the first day of January and ending on the thirty-first day of December. . . . The governor may remove a member for misfeasance, nonfeasance, or malfeasance in office. After an appointee has qualified and before entering upon his duties, he shall take an oath as provided in Section 7 of Article XV, Ohio Constitution. (Emphasis added)

R. C. section 152.02 requires members of the Ohio Building Authority to give a surety bond.

Division (K) of R.C. section 3517.13 provides as follows:

For purposes of divisions (I) and (J) of this section, if a public officer who is responsible for the award of a contract is appointed by the governor, whether or not the appointment is subject to the advice and consent of the senate, excluding members of boards and commissions appointed by the governor, the office of the governor is considered to have ultimate responsibility for the award of the contract.

In determining what constitutes a board or commission within the meaning of those terms as used in division (K), it must first be noted that division (K) refers to public officers appointed by the governor. A public officer is a person who holds a public office. A public office, as defined by Ohio cases, is a charge or trust conferred by public authority for a public purpose, with independent and continuing duties involving the exercise of some portion of the sovereign power. Usual attributes of a public office include the following: the office is created by Constitution or statute, the officer is elected or appointed for a fixed term and may not be removed except for cause, the performing of the duties of the office is not subject to direction or control of a superior officer, a bond and or an oath are required, the office has tenure, i.e., duration and continuance. State, ex rel. Milburn v. Pethtel, 153 O.S. 1 (1950), Herbert v. Ferguson, 142 O.S. 496 (1944), Bricker v. Gessner, 129 O.S. 290 (1935), State, ex rel. State v. Brennan, 49 O.S. 33 (1892). Membership on a board or commission may constitute the holding of a public office where the member exercises independent judgement, is not amenable to a superior authority, performs sovereign powers, and has tenure. State, ex rel. Bricker v. Gessner, supra. The Ohio Ethics Commission has opined that members of the Ohio Building Authority are "appointed to an office". Ohio Ethics Commission Advisory Opinion No. 75-037.

The terms "board" and "commission" are not defined in Chapter 3517 of the Revised Code. Nor are they defined generally in any other part of the Revised Code. However, Black's Law Dictionary (5th edition, 1979) defines "board" as follows:

An official or representative body organized to perform a trust or to execute official or representative functions or having the management of a public office or department exercising administrative or governmental functions.

A committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters of discharge certain functions of a magisterial, representative, or fiduciary character.

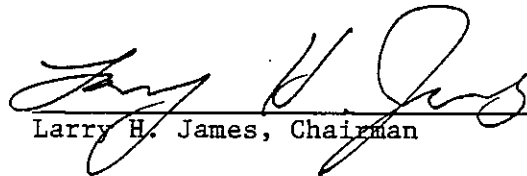
Group of persons with managerial, supervisory, or investigatory functions and power.

Black's Law Dictionary does not define "commission" as used in the present context. However, it does define "commissioner" as follows:

An officer who is charged with the administration of the laws relating to some particular subject matter, or the management of some bureau or agency of the government. Member of a commission or board.

The determination of whether or not a group of individuals constitutes a board or commission is not to be determined solely by reference to its name, but rather by reference to the source and nature of its authority and the inability to exercise such authority individually. The Ohio Building Authority is created by statute and authorized to perform essential state functions. It is composed of five members and may only act as a group. The members are not subordinate to the governor. They are appointed for fixed terms and may only be removed for cause.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that the Ohio Building Authority is a board or commission of public officers within the meaning of those terms as used in R.C. section 3517.13(K).


Larry H. James, Chairman