

EXECUTIVE ORGANIZATION: Commission as head of principal department. Appointment power of governor.

GOVERNOR: Power to appoint statutory state officers and constitutional state officers.

LEGISLATURE: Power over constitutional state office.

CONSTITUTION OF 1963: Office of member of state highway commission.

Executive organization act of 1965 empowers the governor to appoint members of commission of agriculture, commission of conservation and commission of corrections.

Executive organization act of 1965 does not empower the governor to appoint new members of the state highway commission, except to fill vacancies in such offices as are already established by law.

No. 4485

November 5, 1965.

Honorable George Romney
Governor
State Capitol
Lansing, Michigan

You have asked my opinion on the following questions:

1. Is the governor empowered to appoint the members of the commission of agriculture as provided in Sec. 179 of Act 380, P.A. 1965, the members of the commission of conservation as set forth in Sec. 254 of Act 380, P.A. 1965, and members of the commission of corrections in accordance with Sec. 278 of Act 380, P.A. 1965?
2. Is the governor authorized to appoint the members of the state highway commission as provided for in Sec. 354 of Act 380, P.A. 1965?

Act 380, P.A. 1965, being M.S.A. Cur. Mat. §§ 3.29(1) et. seq., is known as the Executive organization act of 1965.

1. The legislature has established a department of agriculture in Chapter 8 of the Executive organization act of 1965 and has designated the commission of agriculture as the head of the department.

Sec. 179 of Chapter 8 of the act provides:

"The commission of agriculture shall consist of 5 members, not more than 3 of whom shall be members of the same political party, appointed by the governor by and with the advice and consent of the senate. The term of office of each member shall be 4 years, except that of members first appointed 2 shall be appointed for 1 year, 1 shall be appointed for 2 years, 1 shall be appointed for 3 years and 1 shall be appointed for 4 years. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the unexpired term. The commission shall elect from its members such officers as it deems advisable. A majority of the commission members shall be required to constitute a quorum."

Prior to the enactment of Act 380, P.A. 1965, supra, the department of agriculture was established by the legislature pursuant to the provisions of

Sec. 1 of Act 13, P.A. 1921, as amended, being C.L.S. 1961, § 285.1; M.S.A. 1958 Rev. Vol. § 12.1, and the legislature created a bipartisan commission of agriculture to be composed of five members appointed by the governor with the advice and consent of the senate to serve terms of 6 years. This statute required that at least one member of the commission be a resident of the Upper Peninsula.

It is abundantly clear that Sec. 179 of Act 380, P.A. 1965, supra, and Sec. 1 of Act 13, P.A. 1921, supra, are so at variance that effect cannot be given to both acts. Sec. 179 of Act 380, P.A. 1965, supra, being the later enactment, must control, and Sec. 1 of Act 13, P.A. 1921, supra, is repealed by implication. *Southward v. Wabash Railroad Co.*, 331 Mich. 138 (1951).

Therefore, it is my opinion that the legislature has by means of Sec. 179 of the Executive organization act of 1965 abolished the office of member of the commission of agriculture created by Sec. 1 of Act 13, P.A. 1921, supra, and created the office of member of the commission of agriculture, and the governor is empowered to appoint the five members of such commission in accordance with the provisions of Sec. 179 of the Executive organization act of 1965.

The legislature has established a department of conservation in Chapter 11 of the Executive organization act of 1965 and has designated the commission of conservation as the head of the department. Sec. 254 of Chapter 11 of the act provides:

“The commission of conservation shall consist of 5 members, not more than 3 of whom shall be members of the same political party, appointed by the governor by and with the advice and consent of the senate. The term of office of each member shall be 4 years, except that of members first appointed 2 shall be appointed for 1 year, 1 shall be appointed for 2 years, 1 shall be appointed for 3 years and 1 shall be appointed for 4 years. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the unexpired term. The commission shall elect from its members such officers as it deems advisable. A majority of the commission members shall be required to constitute a quorum.”

Sec. 1 of Act 17, P.A. 1921, as amended, being C.L.S. 1961 § 299.1; M.S.A. 1958 Rev. Vol. § 13.1, provides for a department of conservation to be administered by a commission of conservation composed of seven members appointed by the governor by and with the advice and consent of the senate to serve terms of six years. Two of the seven members are required to be residents of the Upper Peninsula. The statute contains no requirement that the commission be bipartisan.

It is patent that Sec. 254 of the Executive organization act of 1965, supra, and Sec. 1 of Act 17, P.A. 1921, supra, are in conflict and cannot be harmonized. Sec. 254 of the Executive organization act of 1965, being the later enactment must control, and Sec. 1 of Act 17, P.A. 1921, supra, is repealed by implication. *Southward v. Wabash Railroad Co.*, supra.

Therefore, it is my opinion that the legislature has abolished the office of member of the commission of conservation created by Sec. 1 of Act 17,

P.A. 1921, *supra*, and created the office of member of the commission of conservation in accordance with Sec. 254 of the Executive organization act of 1965, and the governor is empowered to fill such offices in accordance with the provisions of the act.

In Chapter 12 of the Executive organization act of 1965 the legislature has established a department of corrections and has designated the commission of corrections as head of that department. Sec. 278 of Chapter 12 of the act provides:

“The commission of corrections shall consist of 5 members, not more than 3 of whom shall be members of the same political party, appointed by the governor by and with the advice and consent of the senate. The term of office of each member shall be 4 years, except that of members first appointed 2 shall be appointed for 1 year, 1 shall be appointed for 2 years, 1 shall be appointed for 3 years and 1 shall be appointed for 4 years. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the unexpired term. The commission shall elect from its members such officers as it deems advisable. A majority of the commission members shall be required to constitute a quorum.”

Prior to the enactment of Executive organization act of 1965, the legislature made provisions creating a state department of corrections in accordance with Sec. 1 of Act 232, P.A. 1953, being C.L.S. 1961 § 791.201; M.S.A. 1954 Rev. Vol. § 28.2271, and established a corrections commission of six members, no more than three of whom shall be members of the same political party, for terms of six years.

There can be no question but that Sec. 278 of the Executive organization act of 1965, *supra*, and Sec. 1 of Act 232, P.A. 1953, *supra*, are in direct conflict and cannot be harmonized. Sec. 278 of the Executive organization act of 1965, being the later enactment, is controlling, and Sec. 1 of Act 232, P.A. 1953, *supra*, is repealed by implication.

Therefore, it is my opinion that the governor is empowered to appoint the members of the commission of corrections established by Sec. 278 of the Executive organization act of 1965 in accordance with the provisions found in that act.

2. The people have established the constitutional office of member of the state highway commission in Article V, Sec. 28 of the Michigan Constitution of 1963, and provided that there be a state highway commission to be composed of four members, not more than two of whom shall be of the same political party to be appointed by the governor by and with the advice and consent of the senate for four year terms, no two of which shall expire in the same year, as provided by law.

In Sec. 3 of Act 286, P.A. 1964, being M.S.A. Cur. Mat. § 9.216(3), the legislature specified that the governor by and with the advice and consent of the senate shall appoint the first members of the commission for terms of 1, 2, 3 and 4 years commencing on July 1, 1964.

Sec. 354 of Chapter 15 of the Executive organization act of 1965 provides:

"The state highway commission shall consist of 4 members, not more than 2 of whom shall be members of the same political party, appointed by the governor by and with the advice and consent of the senate. The term of office of each member shall be 4 years, except that of members first appointed shall be appointed for specific terms of 1, 2, 3 and 4 years. A member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the unexpired term. The commission shall elect from its members such officers as it deems advisable. A majority of the commission members shall be required to constitute a quorum."

Unlike the statutory public offices created by the legislature which are the subject matter of your first question, the office of member of state highway commission and the governmental body designated as the state highway commission are creatures of the people. The legislature is powerless to abolish the office of member of the state highway commission. Through the enactment of Sec. 354 of the Executive organization act of 1965, the legislature did not intend, as it could not, to abolish the present office of member of the state highway commission and to create a new office of member of the state highway commission, subject to appointment by the governor in accordance with the provisions of that act. It was the intent of the legislature in Sec. 354 of the Executive organization act of 1965 to restate the provision already found in Sec. 3 of Act 286, P.A. 1964, supra, as it relates to the expiration of the term of the office of member of the state highway commission. Such construction obviates any conflict with Article V, Sec. 28 of the Michigan Constitution. See *People v. Babcock*, 343 Mich. 671 (1955).

Therefore, it is my opinion that the governor is without authority to appoint new members of the state highway commission under Sec. 354 of the Executive organization act of 1965 except to fill vacancies in such offices as are established by law.

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