OPINION NO. 91-034

Syllabus:

1. Pursuant to R.C. 4121.12(B), initial appointments to the Workers' Compensation Board are for staggered terms, with one term ending on the thirtieth day of June in each of eight consecutive years, 1992 through 1999.

2. An appointment to a term of office that is established by statute must be for the period so established; the appointing authority has no power to vary the term.

3. If it is discovered that an appointment to a term of office established by statute erroneously indicates that the term ends prior to the date established by statute, the appointment is deemed to be for the statutorily-established term, and it is appropriate to notify the appointee of that fact.

To: John R. Hodges, Chairman, Workers' Compensation Board, Columbus, Ohio
By: Lee Fisher, Attorney General, August 8, 1991

I have before me your request for an opinion concerning the terms of office for the initial gubernatorial appointees to the Ohio Workers' Compensation Board. Your letter indicates that there is an apparent discrepancy between the terms of office established by R.C. 4121.12 and the dates used by former Governor Celeste in making the initial appointments to the board.

R.C. 4121.12, which creates the Board, provides for eight of its members to be appointed by the Governor. When the initial appointments were made, R.C. 4121.12 stated:

> (B) Within ninety days after the effective date of this amendment, the governor shall make initial appointments to the board. *Of the initial appointees, one shall be for a term ending on the thirtieth day of June following the second year after the appointment*, one shall be for a term ending on the thirtieth day of June following the *third year after the appointment*, one shall be for a term ending

> on the thirtieth day of June following the *fourth year of appointment*, one shall be for a term ending the thirtieth day of June following the *fifth year of appointment*, one shall be for a term ending on the thirtieth day of June following the *sixth year of appointment*, one shall be for a term ending on the thirtieth day of June following the *seventh year of appointment*, one shall be for a term ending on the thirtieth day of June following the *eighth year of appointment*, and one shall be for a term ending on the thirtieth day of June following the *ninth year of appointment*. Thereafter, terms of office of appointees made by the governor shall be for nine years, beginning on the first day of July and ending on the thirtieth day of June.
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> (D) Each appointed member shall hold office from the date of his appointment until the end of the term for which he was appointed, except that if a member has not been appointed by the end of the term, the member shall remain in office until his successor takes office, or until a period of sixty days has elapsed, whichever occurs first. (Emphasis added.)

The amendment enacting this language took effect on November 3, 1989, *see* Am. Sub. H.B. 222, 118th Gen. A. (1989) (eff. Nov. 3, 1989), and the Governor made the appointments in November of 1989.

The General Assembly subsequently amended R.C. 4121.12(B), changing the future tense "shall be" to the present tense "is" or "are," and specifying November 3, 1989, as the effective date of the appointment provisions. *See* Am. Sub. H.B. 297, 119th Gen. A. (1991) (eff. July 26, 1991). These amendments do not affect the language establishing the length of the terms of office. Rather, the amended language simply recognizes that the terms provided for in the initial statute have commenced.

It is apparent from the use of the successive ordinal numbers "second" through "ninth" in R.C. 4121.12(B) that the General Assembly intended that the terms of members of the Board be staggered so that, after the initial appointments, one Board member would be appointed each year, to replace the member whose term ends on June thirtieth of that year. Of course, with eight members serving nine-year terms, there will be one year out of each nine in which no term ends and no appointment may be made.

For purposes of considering the length of the various terms of office, I look first at the shortest term – that is, the term "ending on the thirtieth day of June following the second year after the appointment." R.C. 4121.12(B). The word "year," as used in the Revised Code, is defined as "twelve consecutive months." R.C. 1.44(B). The appointment in question was made in November of 1989. The first year after the appointment thus ended in November of 1990, and the second year after the appointment will end in November of 1991. The thirtieth day of June following that second year will, therefore, be June 30, 1992. Since the other seven terms are staggered, with one expiring each year, it follows that those terms will end, respectively, on the thirtieth day of June in the years 1993 through 1999.

I note that, beginning with the term ending on the thirtieth day of June following the fourth year, the statutory language changes from "after the appointment" to "of appointment." The reason for the change is not apparent, and I see no reason for computing the terms differently based upon this variation in language. It appears that, for purposes of R.C. 4121.12(B), the fourth year after an appointment is the same as the fourth year of an appointment. This conclusion is consistent with the legislatively-established pattern of staggered termination dates.

Your letter notes that, in making the initial appointments to the Ohio Workers' Compensation Board, former Governor Celeste indicated that the terms of the appointees would end on the thirtieth day of June in the years 1991 through 1998. I concur in your conclusion that the use of these dates appears to shorten each member's term by one year.

I turn now to your question as to how to proceed to correct the appointments. As a matter of law, when a term of office is established by statute, the appointing authority has no power to vary the term. *See, e.g., Mackin v. City*

of Avon Lake, 12 Ohio App. 3d 70, 465 N.E.2d 1355 (Lorain County 1983); *In re Etter*, 2 Ohio App. 165, 167 (Holmes County 1913) ("[t]he only power given the court by the statute is the power to appoint; the statute fixes the length of the term..."). When the initial members of the Workers' Compensation Board were appointed, they were appointed to the terms established by R.C. 4121.12(B); no other terms existed, and the Governor had no power to vary those terms.

A term of office is a fixed period of time during which an official has a right to the office. *See, e.g., Mackin v. City of Avon Lake; In re Etter.* Thus, even without any additional action, each initial appointee to the Workers' Compensation Board is entitled to hold his office for the period designated by statute, regardless of whether that period was correctly computed by the Governor when the appointment was made.

As a matter of law, no action need be taken to entitle each initial Board member to serve the full term established by statute. It is, however, apparent that the members may be confused as to the length of their respective terms, and it would be appropriate to notify the initial Board members of the error in computation and inform them that their appointments are deemed to be for the terms established by statute.

It is, therefore, my opinion, and you are advised, as follows:

1. Pursuant to R.C. 4121.12(B), initial appointments to the Workers' Compensation Board are for staggered terms, with one term ending on the thirtieth day of June in each of eight consecutive years, 1992 through 1999.

2. An appointment to a term of office that is established by statute must be for the period so established; the appointing authority has no power to vary the term.

3. If it is discovered that an appointment to a term of office established by statute erroneously indicates that the term ends prior to the date established by statute, the appointment is deemed to be for the statutorily-established term, and it is appropriate to notify the appointee of that fact.