

But this case is not necessarily determinative of the question here involved, since the office concerned therein was one which lay inherently within the appointive power of the Governor, whereas in the instant case the Governor appoints the member, not by reason of any inherent power vested in him, but rather, as determined in the Benn case, as the agent of the Senate.

Considering the nature of the appointive power of the Governor with respect to members of the Pennsylvania Public Utility Commission, we are forced to the conclusion, and you are accordingly advised, that the Governor may not make an ad interim appointment of the rejected appointee. The withholding of its consent by the Senate is a denial of the Governor's authority to reappoint the same individual. As to him the Governor's right of appointment has been taken away.

If it be contended that under this view such an appointee would effectually be barred from holding such office in the future, the answer is that no such result follows. The effect of the Senate's action of rejection is merely an abridgement of the Governor's authority; the power of the Senate yet remains. That body, upon renomination by the Governor, may give its consent and approval to the appointment of the rejected individual, but, in our opinion, until this is done, the appointment by the Governor would be ineffectual.

Very truly yours,
DEPARTMENT OF JUSTICE,
GUY K. BARD,
Attorney General.
JOHN T. DUFF, JR.,
Deputy Attorney General.

OPINION No. 267

Incompatible offices—Member of the Legislature and member of the Pennsylvania Turnpike Commission—Art. II, sec. 6, of the Constitution.

A member of the present General Assembly may not be appointed as a member of the Pennsylvania Turnpike Commission until his term of office as Senator or Representative shall have expired.

DEPARTMENT OF JUSTICE,
Harrisburg, Pa., November 29, 1938.

Honorable George H. Earle, Governor of Pennsylvania, Harrisburg, Pennsylvania.

Sir: We have your request to be advised concerning whether a member of the present General Assembly is eligible at this time

for appointment as a member of the Pennsylvania Turnpike Commission.

Article II, section 6 of the Pennsylvania Constitution provides that:

No Senator or Representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth, * * *

Membership in the Pennsylvania Turnpike Commission is clearly a "civil office under this Commonwealth" within the meaning of this constitutional prohibition.

Section 4 of the Act of May 21, 1937, P. L. 774, creates the commission as an instrumentality of the Commonwealth and constitutes the exercise of its powers as an essential governmental function of the Commonwealth. Therefore, it follows that a member of the General Assembly may not be appointed as a member of the Pennsylvania Turnpike Commission during his term of office.

This conclusion is in accord with the formal opinion of this department rendered to former Governor Fisher under date of June 7, 1927, and reported in Official Opinions of the Attorney General, 1927-1928, page 86, wherein the Governor was advised that article II, section 6 of the Pennsylvania Constitution forbids the appointment of members of the General Assembly to membership on departmental administrative boards or commissions.

Article II, section 3 of the Pennsylvania Constitution provides that Senators shall be elected for a term of four years and Representatives for a term of two years. Section 2 of the same article provides that the term of service for members of the General Assembly shall begin on the first day of December next after their election. Consequently, the terms of the members of the present General Assembly who have not been reelected to office will expire December 1, 1938, the date when the terms of their successors will commence.

Accordingly, we are of the opinion that a member of the present General Assembly may not be appointed as a member of the Pennsylvania Turnpike Commission until his term of office as Senator or Representative shall have expired.

Very truly yours,

DEPARTMENT OF JUSTICE,

GUY K. BARD,

Attorney General.

GEORGE W. KEITEL,

Assistant Deputy Attorney General.