

ORIGINAL

IN THE SUPREME COURT OF OHIO

DR. TERRIE SIZEMORE, RN DVM,

Relator-Appellant,

v.

THE OHIO VETERINARY MEDICAL
LICENSING BOARD,

Respondents-Appellees.

:
:
: Case No. 2012-0176
:
: ON APPEAL FROM THE FRANKLIN
: COUNTY COURT OF APPEALS,
: TENTH APPELLATE DISTRICT,
: CASE NO. 2012 0176
:
:

**BRIEF OF RESPONDENT - APPELLEE OHIO VETERINARY MEDICAL LICENSING
BOARD**

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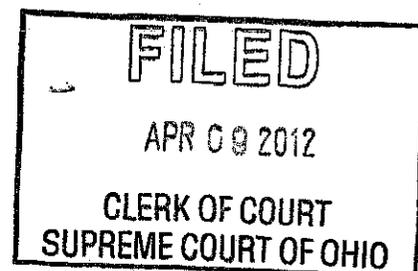


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I. FACTS AND PROCEDURAL HISTORY

This appeal of an original mandamus action brought by Relator, Dr. Terrie Sizemore (“Dr. Sizemore” or “Appellant”) in the Tenth Appellate District, revolves around a March 2, 2007 Adjudication Order, File # 05-05-067 (“Order”), in which Respondent-Appellee, Ohio Veterinary Medical Licensing Board (“OVMLB” or “Board”) found that Dr. Sizemore had failed to maintain proper records in violation of R.C. 4741.22(A) and (AA) and Ohio Admin. Code 4741-1-21(1) and (3); and 4741-1-03(B)(6)(a). Dr. Sizemore then appealed to the Franklin County Court of Common Pleas, which dismissed her appeal for lack of subject-matter jurisdiction. Dr. Sizemore then appealed the lower court’s decision to the Tenth Appellate District, which appeal resulted in a mediated agreement by all parties to dismiss the appeal, vacate the trial court’s decision and remand the matter back to the OVMLB. Subsequently, in a letter to Dr. Sizemore dated November 21, 2007, and based upon Dr. Sizemore’s recent correspondence, the OVMLB dismissed all charges against her.

Dr. Sizemore then filed a motion with the trial court arguing that the court had not actually remanded the case properly back to the OVMLB. On May 20, 2009, the trial court vacated its earlier order and issued another order again remanding the matter back to the OVMLB so that the Board could reissue a final order. (Appendix 1.) The OVMLB, again having jurisdiction over the matter, moved and approved an official dismissal of all charges in File #05-05-067. OVMLB notified Dr. Sizemore of the dismissal on June 9, 2009. (Appendix 2.) Apparently unsatisfied with the dismissal of charges, Dr. Sizemore then filed a Mandamus demand in the Tenth District Court of Appeals (“appeals court”) seeking to compel the OVMLB to re-issue the original March 2, 2007 Adjudication Order finding her guilty of misconduct and requesting the court order reimbursement for her expenses. The appeals court properly found

that Relator had no clear legal right to have OVMLB “re-issue the March 2, 2007 Order,” because the appellate court did not order OVMLB to issue a specific order. The court stated, “We do not believe that Sizemore has the right to compel a governmental agency to issue an order which the agency no longer feels is appropriate. The agency, especially an agency which serves as an adjudicating authority, has inherent power to dismiss charges against an individual who has had claims of misconduct levied against her or him.” Simply stated, because there are no longer any charges pending relating to File # 05-05-067, there is no Adjudication Order for the OVMLB to refile.

II. STANDARD OF REVIEW

Mandamus is defined as “a writ issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty arising from an office, trust, or station.” R.C. 2731.01. Before a court may grant a writ of mandamus, it must find that (1) the relator has a clear legal right to the relief prayed for; (2) the respondent was under a clear legal duty to perform the requested act; (3) the relator has no other plain and adequate remedy at law. *State ex rel. Pressley v. Indus. Comm.*, 11 Ohio St.2d 141, 161(1967). The relator must prove her case by clear and convincing evidence.

Denial of a mandamus demand is warranted where it appears beyond doubt from the petition that the relator can prove no set of facts warranting relief. *State ex rel. Jennings v. Nurre* (1995), 72 Ohio St.3d 596; *York v. Ohio State Highway Patrol* (1991), 60 Ohio St.3d 143. Therefore, if Dr. Sizemore can prove no set of facts that would support the issuance of a writ of mandamus, the petition should be denied.

III. LAW AND ARGUMENT

A. The appeals court correctly denied Relator's demand for a writ of mandamus.

The appeals court succinctly summarized this case in its decision as follows:

“[Appellant] Sizemore does not have a clear right to force the OVMLB to issue an order finding her guilty of misconduct. Since she has no such clear legal right, she has no right to a writ of mandamus. Since she has no right to a writ of mandamus, she is not entitled to the other relief she requests.”

Dr. Sizemore's lengthy but inapplicable citation of legal authorities and her narrative about an OVMLB case that was dismissed nearly three years ago, belie the fact that she makes no argument whatsoever for why she thinks the appellate court's decision is in error. Indeed, Appellant argues about everything except the issue that actually is before this court, denial of her request for a writ of mandamus. Not surprisingly, as more fully discussed below, there is no relevant argument that Dr. Sizemore can make to this Court.

Ultimately, what Dr. Sizemore really wants is another opportunity to argue about an administrative action that was dismissed nearly three years ago. Consequently, since she does not argue how the appellate court erred as a matter of law, her arguments are irrelevant. This case is simple to decide: whether the appeals court correctly decided that Dr. Sizemore is not entitled to a writ of mandamus. For this reason and reasons set forth below, the decision of the appeals court denying the writ of mandamus should be affirmed.

B. There has been no refusal to render judgment, nor any unnecessary delay.

In the present case, the OVMLB has neither refused to render a judgment nor has it delayed in proceeding to judgment in response to Dr. Sizemore's appeal. To the contrary, the OVMLB devoted considerable time, energy and resources to Dr. Sizemore's case and, in

accordance with its normal processes, duly decided to dismiss the charges filed against her in File # 05-05-067.

Mandamus, a high prerogative writ of an extraordinary nature, is not an appropriate remedy in this case. *State ex rel. Doe v. Tracy* 51 Ohio App.3d 198(1998). To the contrary, a writ of mandamus is only appropriate to compel judicial action when a court has refused to render judgment or has unnecessarily delayed proceeding to judgment. *State ex rel. Dehler v. Sutula*, 74 Ohio St.3d 33, 35(1995). For this reason, mandamus cannot be used to interfere with a court's normal operating procedures or to compel a court to reach a particular conclusion or result. *State ex rel. Tillimon v. Weiher*, 65 Ohio St.3d 468(1992). Courts presume the regularity of such court proceedings. *Id.* These standards are applicable to Boards as well. Therefore, since there has been no unnecessary delay and no refusal to deliberate by the OVMLB, Dr. Sizemore's petition demanding that the previously dismissed charges be refiled w properly denied by the appeals court.

C. Mandamus will not lie where an appeal provides an adequate remedy at law.

Mandamus will not issue where, as here, an appeal provides an adequate remedy at law. Clearly, as evidenced by Dr. Sizemore's own acts, she understood that she had a clear and adequate remedy at law. Indeed, she took advantage of her appeal rights in Case No. 07CVF03-3669, which resulted in a final appealable order entered by Judge Reece, see June 25, 2007 Decision and Entry attached to Sizemore's petition, a decision which Dr. Sizemore appealed to the Tenth Appellate District on July 20, 2007. See Notice of Appeal, 07APE07 0577, attached to Dr. Sizemore's petition. Indeed, it was as a result of this appeal that all charges against Dr. Sizemore in File # 05-05-067 were ultimately dropped. The fact that Dr. Sizemore later

determined that she preferred to have the charges against her reissued rather than dismissed creates no clear legal right nor any clear legal duty for her to receive the same.

D. The OVMLB had jurisdiction and authority to dismiss the charges against Appellant.

Dr. Sizemore asserts that the OVMLB had no jurisdiction or authority to dismiss the charges against her. She claims contract law violation and superseding appellate jurisdiction prevents the OVMLB from dismissing the underlying charges. Yet, Dr. Sizemore herself recognizes that the trial court's May 20, 2009 order vacated its own original order of June 26, 2007, and remanded the matter to the OVMLB for disposition, divesting the appellate courts of jurisdiction, and mooted the agreement reached in appeals court. The trial court directed the OVMLB to "issue an order." Consistent with the trial court's directive, the OVMLB then duly considered the matter, reviewed correspondence from the Respondent, and then moved to approve the dismissal of case File#5-05-067. "Generally, administrative agencies have inherent authority to reconsider their own decision since the power to decide the first instance carries with it the power to reconsider." *State ex rel. Borsuk v. Cleveland*, 28 Ohio St. 2d 224(1972). (Appendix 3.) The *Borsuk* Court recognized the ability of an agency to change its mind regarding administrative actions, absent superseding appellate jurisdiction, which the trial court surrendered when it remanded the matter back to OVMLB with its May 20, 2009 order. At that point, the OVMLB could reinstate charges, or as in this case, dismiss them.

E. Relator's extraneous arguments are not proper for a writ of mandamus.

Dr. Sizemore also argues fraud, contempt of court, conspiracy, improper representation and a plethora of other malfeasance allegations against the lower courts, the Attorney General's Office, and the OVMLB. A Writ of Mandamus is an improper vehicle for these unsubstantiated

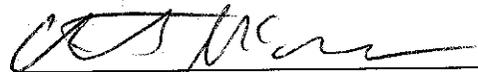
and often criminal allegations. Dr. Sizemore provides neither evidentiary basis in this record, nor in her averments that any person or entity involved in this matter has violated criminal law, ethical restraints or acted outside the scope of their duties or employment.

IV. CONCLUSION

Dr. Sizemore has failed to demonstrate that the appeals court erred when it denied her writ of mandamus, or that the OVMLB has a clear duty to reissue the March 2, 2007 Adjudication Order. For all of the reasons set forth herein, OVMLB respectfully asks the decision of the appeals court be affirmed.

Respectfully submitted,

MICHAEL DeWINE (0009181)
Ohio Attorney General

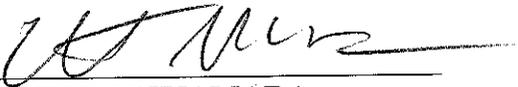


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Counsel for Respondent
Ohio Veterinary Licensing Board

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Brief of Respondent – Appellee Ohio Veterinary Medical Licensing Board* has been sent by regular mail on the ⁰⁷ day of April, 2012, to Dr. Terrie Sizemore, RN DVM, P.O. Box 23, Sullivan, Ohio 44880.



WALTER MCNAMARA
Assistant Attorney General

APPENDIX

APP 13

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
GENERAL DIVISION

TERRIE SIZEMORE, D.V.M.,

Appellant,

vs.

**OHIO VETERINARY MEDICAL
LICENSING BOARD,**

Appellee.

CASE NO. 07CVF03-03669

JUDGE REECE

CLERK IN COURTS
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FILED

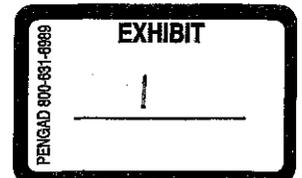
**AGREED ORDER VACATING JUNE 26, 2007 DECISION AND REMANDING
CASE TO OHIO VETERINARY MEDICAL LICENSING BOARD**

Issued this 19th day of May 2009.

REECE, J.

On June 26, 2007, upon Appellee's motion, this Court dismissed this Revised Code 119.12 administrative appeal, with prejudice, for lack of subject-matter jurisdiction. On July 21, 2007, Appellant appealed this Court's decision to the Court of Appeals of Ohio, Tenth Appellate District. On August 20, 2007, the parties filed the following "Motion and Agreed Entry" in the Court of Appeals:

Counsel for Appellant Terrie Sizemore and counsel for Appellee Ohio Veterinary Medical Licensing Board hereby agree to dismiss this appeal, vacate the lower court's decision and to remand this matter back to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Supreme Court's decision in *Hughes v Ohio Department of Commerce* (2007), 114 Ohio St. 3d 47, 2007-Ohio-2877.



On August 28, 2007, the Court of Appeals journalized the following "Journal Entry of Dismissal":

The parties having filed on August 20, 2007, what is construed as an agreed motion to dismiss and remand, this appeal is hereby dismissed and the matter remanded to the trial court for consideration of the parties' joint request that its decision be vacated and the matter remanded to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the Ohio Supreme Court's decision in *Hughes v Ohio Dept. of Commerce* (2007), 114 Ohio St. 3d 47.

On May 14, 2009, Appellant notified this Court's Magistrate that this Court had not yet acted on the parties' joint request to vacate and remand.

Accordingly, upon the joint request of the parties and for good cause shown, this Court's June 26, 2007 decision is hereby **VACATED**, and this case is hereby **REMANDED** to the Ohio Veterinary Medical Licensing Board to re-issue a final order pursuant to the decision of the Supreme Court of Ohio in *Hughes v. Ohio Dept of Commerce*, 114 Ohio St. 3d 47, 2007-Ohio-2877.

It is so **ORDERED**.


JUDGE GUY L. REECE II

Copies to:

MICHAEL A. THOMAS, ESQ. (0005844), Counsel for Appellant, 1154 Linda St., Ste. 250, Cleveland, OH 44116-1876

BARRY D MCKEW, AAG (0008576), Counsel for Appellee, 30 E. Broad St., Fl. 26, Columbus, OH 43215-3428



The Ohio Veterinary Medical Licensing Board

77 South High Street, 16th Floor, Columbus, Ohio 43215-6108



CERTIFICATION OF RECORD

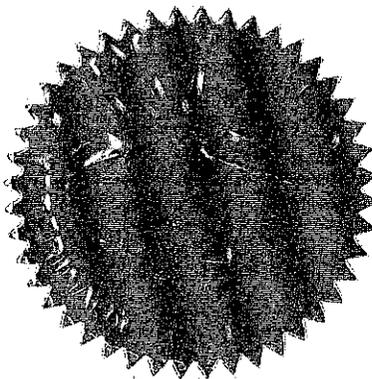
In the matter of in the matter of Sizemore v The Ohio Veterinary Medical Board,

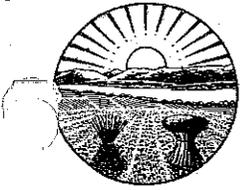
I, Theresa Stir, Executive Director of the Ohio Veterinary Medical Licensing Board ("Board"), do hereby certify that the attached are true and correct copies of:

1. The Board minutes for June 10, 2009 where the Board members moved to dismiss the Board action against Dr. Sizemore; and
2. A copy of the letter dated June 11, 2009 informing Dr. Sizemore of the dismissal of the case against her.

IN TESTIMONY WHEREOF, I hereunto subscribe my name officially and affix the seal of my office in the City of Columbus, County of Franklin, State of Ohio, this 27th day of April, 2011.

Theresa Stir, Esq.
Executive Director





The Ohio Veterinary Medical Licensing Board

77 South High Street, 16th Floor, Columbus, Ohio 43215-6108



MEETING MINUTES June 10, 2009

- **Call to Order:**

Dr. Roger Redman, President of the Ohio Veterinary Medical Licensing Board called the June 10, 2009 meeting to order at 8:30 a.m. in the Board room located at 77 South High Street, 31st Floor, Columbus, Ohio.

- **Acknowledge Staff, AAG & Guests:**

Dr. Redman acknowledged the attendance of Barry McKew, Assistant Attorney General, Theresa Stir, Executive Director and Angela Mann, Licensure Coordinator taking minutes for the Board. He also recognized the attendance of Dr. Bill Saville, DVM, DACVIM, PhD of the Ohio State University and welcomed guests in the audience.

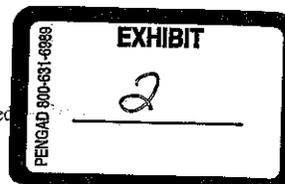
- **Roll Call:**

Geoffrey Smith, Public Member	present
Dr. Lisa Mach, DVM	present
Dr. Janet Small, DVM	present
Dr. Darrell Gitz, DVM	present
Dr. James Hearst, DVM	present
Renee Jessen, RVT	present
Dr. Roger Redman, DVM	present

- **May 2009 Minutes Approved:**

Dr. Small moved to accept the meeting minutes as written. Dr. Mach seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

In deference to Dr. Saville's time, Dr. Redman asked the Board's permission to go out of order of the agenda in order to discuss the Student Loan Repayment Program. The Board agreed by general consensus.



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- **Student Loan Repayment Program:**

Ms. Stir explained to the Board that the amount as of May 13, 2009 was \$52,950.00. However the law allows the grantees the opportunity to recoup their income tax payments on the awards. So far, two recipients have submitted their tax payment in the amount of \$5393, which will reduce the total amount available. The total as of 6/2/09 available is \$48,132.00. Approximately 50 limited license renewals were sent out for renewal by July 1, 2009; \$10.00 from the renewal fees will be applied towards the student loan fund in the next fiscal quarter.

Ms. Stir further explained to the Board that we have received ten (10) applications for the repayment program. Upon discussion from all board members and Dr. Saville, Dr. Gitz moved to award the following:

- Dr. Mary Mowrer - \$5,000.00
- Dr. Stephanie Bown - \$7,500.00
- Dr. Andrew Mack - \$7,500.00
- Dr. Ellen Hartz - \$7,500.00

Dr. Mach seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

[Dr. Saville departed at 9:07 a.m.]

- **President's Report:**

Dr. Redman stated that per the Board's request, he met with Dr. Garrison to discuss the Farm Management Rule. Dr. Weale, DVM, Jack Advent and Michelle Holdgrove of the OVMA were also in attendance. He provided the Board with a draft Rule as a result of their coordinated efforts. After much discussion, amendments were made to the draft Rule. The Board directed Ms. Stir to send the amended draft rule to OVMA and express their willingness to delay until a rule can be developed agreeable to all interested parties and complies with the statute.

- **Secretary's Report:**

There was no report from the Secretary.

- **OVMA Liaison:**

There was no report from the OVMA liaison.

- **OAVT Liaison:**

There was no report from the OAVT liaison.

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- **Executive Director Report:**

- A. Fiscal - Ms. Stir informed the Board that the Senate version of the budget bill cut the allotment by 2.5% (approximately \$8000). She explained that it is still unknown if there will be an additional 30% cut per the Governor's Executive Order that she'll have to allot for. Additionally in the budget bill, CSA had their budget significantly reduced which may result in an increase in costs for their services.
- B. Legislation – Ms. Stir informed the Board that if the language stays the same in the budget bill, she will be bringing forward a rule change for Chapter 3 regarding the language for the Student Loan Repayment Program. She also may submit a change for Rule 4741-1-24 OAC regarding the number of times the Board shall meet each year.
- C. Policy – Ms. Stir provided the Board with the policy on accessing confidential personal information in accordance with HB 648 of the 127th General Assembly and the Revised Management Directive from the Governor's Office. Ms. Jessen moved to approve the policy. Dr. Gitz seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- **FYI:**

The Board reviewed the following with no comment:

- A. AAVSB – Veterinary Regulation News: May 2009
- B. AAVSB Memo – RE: Proposed Bylaw Changes
- C. NBVME – Quarterly Newsletter: May 2009

- **Requests for Licensure:**

- A. Veterinarians (addendum 1) – Ms. Jessen moved to approve the following requests for veterinarian licenses.

William J. Durfee, DVM; Ashley L. White, DVM; Nicole P. Scott, DVM; Sarah A. Beechler, DVM; Gwendalyn M. Maginnis, DVM; Katie A. Rumsey, DVM; Jonathan J. Dohanich, DVM; Matthew A. Carey, DVM; Jessica L. Swords, DVM; Jennifer L. Mathews, DVM; Lisa C. Killian, DVM; Amber L. Flora, DVM; Rebecca R. Field, DVM; Julie C. Miller, DVM; Vicky E. Grumman, DVM; Johnathan J. Pierce, DVM; Julie A. Bracey, DVM.

Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- B. Registered Veterinary Technicians (addendum 2) – Ms. Jessen moved to approve the following requests for registered veterinary technician licenses.

Chelsea M. Banks, RVT; Kayla N. Seavert, RVT; Pamela L. Parquette, RVT; Ashlie V. Clark, RVT; Joseph M. Ullmer, RVT; Megan M. Clemons, RVT; Rebecca Estok, RVT; Sondra L. Ewing, RVT; Katelyn M. Simons, RVT; Jennifer J. Dettloff, RVT; Katherine L.

Holland, RVT; Ashley E. Washtock, RVT; Rachel M. Lees, RVT; Pamela C. Zorn, RVT; Amy F. Wilks, RVT; Claire E. Ekardt, RVT; Bonnie M. Shaffer, RVT; Kerri L. Weaver, RVT; Abigail M. Kirk, RVT; Robin C. Chambers, RVT; Jennifer L. Curtis, RVT; Bonnie L. Hockin, RVT.

Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- D. Limited and Limited Resident Licenses (addendum 3) – Ms. Jessen moved to approve the following requests for limited and limited resident licenses.

Kyle A. Francis, DVM; David J. Haeussler, Jr., DVM; Ketaki Karnik, DVM; Rebecca A. Krimmins, DVM (resident); Sara J. Irom, DVM; Agnieszka M. Kent, DVM; Paula Martin, DVM; Shona L. McMahon, DVM; Andrew D. Mercurio, DVM; Ann M. Peruski, DVM; Christa L. Robinson, DVM; Lisa M. Sams, DVM; Sean T. Surman, DVM; Katy L. Townsend, DVM; Bridget Urie, DVM; Jared M. Williams, DVM; Patrick J. Grimm, DVM; Michelle E. Goodnight, DVM; Kathryn L. Fitzwater, DVM; Jennifer A. Dulin, DVM; Richard E. Cober, DVM; Troy A. Brick, DVM; Ron Ben-Amotz, DVM; Rosa Barsnick, DVM.

Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- E. The Board reviewed correspondence from Mark Doty asking the Board to allow candidates that have failed the NAVLE to be eligible for a Provisional License. The Board referred to the December 12, 2007 meeting minutes in which a motion and vote was taken that individuals who had failed the NAVLE were not qualified to apply for the provisional license. Dr. Gitz moved to deny Mr. Doty's request to modify the qualifications for the provisional license. Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- F. The Board reviewed an application for a Registered Veterinary Technician certificate. The applicant indicated that he had been convicted of or entered a plea of "no contest" to a misdemeanor or felony offense. He provided a statement stating that in 2001 he was arrested for driving under the influence, possession of marijuana and drug paraphernalia. He stated that he was convicted of driving under the influences but the other charges were dropped. Dr. Gitz directed Ms. Mann to request that official court documents be forwarded to this Board verifying his statement. Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- **Consideration of:**

- A. 08-09-119, Ms. Nancy Ziol, RVT – The Board acknowledged that the case is closed.

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- **Executive Session:**

Dr. Small moved to go into Executive Session at 9:52 a.m. to discuss the Assistant Attorney General Reports and Investigative Reports. Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

Dr. Redman announced the Board meeting back in public session at 10:10 a.m.

- **Assistant Attorney General Report:**

- A. 05-05-067--Terrie Sizemore, DVM – Dr. Gitz moved to dismiss the case, which had been remanded from the Court of Common Pleas, Franklin County in May, 2009. Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-abstain, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- B. Dr. Gitz moved that the minutes reflect that the Board had directed Ms. Stir in November, 2007 to send Dr. Sizemore a letter, as a courtesy, to indicate their intention to dismiss the charges in case #05-05-067 once the jurisdiction of the subject matter was remanded back to the Board. Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-abstain, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- **Investigative Reports:**

- A. 09-09-002, complainant Sandy Paris – Dr. Gitz moved to file a Notice of Opportunity for a Hearing for a violation of Section 4741.41(A) ORC. Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

[Break: 10:12 a.m. – 10:33 a.m.]

- **New Complaints (no responses yet requested):**

- A. 09-09-042, complainant Terrie Sizemore, DVM – Dr. Gitz moved to dismiss for lack of jurisdiction. Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- B. 09-09-043, complainant Donna Druta – Dr. Mach moved to find no violation of Chapter 4741 ORC but directed Ms. Stir to refer her to the OVMA's Grievance Committee. Dr. Gitz seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- C. 09-09-046, complainant Dawn M. Newton – Ms. Jessen left the room prior to discussing this case. Dr. Gitz moved to find no violation of Chapter 4741 ORC, but directed Ms. Stir to provide a letter to the treating veterinarian regarding the records policy. Dr. Hearst seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-abstain.
- D. 09-09-047, complainant Peantay Bealer – Dr. Gitz moved to schedule a compliance inspection. Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- E. 09-09-048, complainant Anonymous – Dr. Gitz moved to find no violation of Chapter 4741 ORC, but directed Ms. Stir to send the veterinarian a copy of the complaint filed against him and a copy of the practice act. Dr. Hearst seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- F. 09-09-049, complainant Tanya Davis – Dr. Gitz moved to find no jurisdiction. Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- G. 09-09-050 – complainant – Ruth Boll, DVM – Dr. Gitz moved to find no violation of Chapter 4741 ORC, but directed Ms. Stir to refer her to the Pharmacy Board. Dr. Mach seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- **Complaint Responses Received:**

- A. 09-09-034, complainant Heide Horvath & Johanna Winner – Dr. Mach moved to find no violation of Chapter 4741 ORC, but directed Ms. Stir to provide a letter to the treating veterinarian regarding the records policy. Dr. Gitz seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- B. 09-09-035, complainant Susan Quinn – Dr. Gitz moved to send the case to investigation. Dr. Mach seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- C. 09-09-037, complainant Deena Luce – Dr. Hearst moved to find no jurisdiction. Dr. Small seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- D. 09-09-038, complainant Vince Anello – After review of the X-rays, Dr. Gitz moved to find no violation of Chapter 4741 ORC. Dr. Hearst seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- E. 09-09-040, complainant Logan Allie – Dr. Gitz moved to find no violation of Chapter 4741 ORC. Dr. Mach seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- F. 09-09-041, complainant Gary M. Benjamin – Ms. Jessen left the room prior to discussing this case. Dr. Mach directed Ms. Stir to request the records and a narrative from the treating veterinarian. Dr. Gitz seconded the motion. The motion passed by the following roll call vote: Mr. Smith-absent, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-abstain.
- G. 09-09-044, complainant Chris & Katie Bolte – Dr. Small moved to find no violation of Chapter 4741 ORC. Dr. Gitz seconded the motion. The motion passed by the following roll call vote: Mr. Smith-absent, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.
- H. 09-09-045, complainant Shawn Lewis – Dr. Small moved to find no violation of Chapter 4741 ORC. Dr. Gitz seconded the motion. The motion passed by the following roll call vote: Mr. Smith-absent, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

• **Continuing Education Requests - Veterinarians**

Dr. Hearst moved to approve the following continuing education requests for veterinarians as follows:

- A. MedVet Associates, Ltd. –
- 1.) Discussion from diagnosis to therapy, involving medical, radiation and surgical oncologists: 4/16/09, 5/7/2009, 5/21/09 = 1 hour
 - 2.) Canine & Feline Uveitis: 4/23/09 = 1 hour
 - 3.) Obesity: 4/29/09 = 1 hour
 - 4.) Pituitary Tumors & Pituitary Dependent Hyperadrenocorticism: 5/13/09 = 1 hour
- B. US Department of Health & Human Services – Office of Laboratory Animal Welfare: 6/17/08 = 5 hours
- C. Butler & Warren Counties Veterinary Medical Association – Canine Audiology: 5/12/09 = 2 hours
- D. Merial Ltd. – “Great News on Treatment of Pain from Surgery & Osteoarthritis”: 4/30/09 = 1 hour
- E. Vaccine Technology: 5/5/09 = 2 hours
- F. Orthopedic Exams: 4/7/09 = 2 hours
- G. VetMed Consulting – State Board’s Veterinary Laws, Rules, Regulations & Statues = Non-scientific

- 5
- H. Toledo Veterinary Medical Association – Neurology Exam & Case Studies: 5/20/09 = 2 hours

Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- **Continuing Education Requests – RVT’s**

Dr. Hearst moved to approve the following continuing education requests for registered veterinarian technicians as follows:

- A. MedVet Associates, Ltd. –
 - 1.) Managing Chest Tube Patients: 4/23/09 = 1 hour
 - 2.) Update on current anesthesia recommendations: 4/25/09 = 1 hour
 - 3.) Common Toxins in Veterinary Medicine: 5/20/09 = 1 hour
- B. Merial Ltd. – Fleas, Fleas & More Fleas: 5/27/09 & 5/28/09 = 1 hour
- C. Metropolitan Veterinary Hospital – Essentials of Pain Management: 5/28/09 = 1 hour

Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

- **Continuing Education Requests – Veterinarians and RVT’s:**

Dr. Hearst moved to approve the following continuing education requests for veterinarians and registered veterinarian technicians as follows:

- A. AAHA – Profiting in the Digital Age: 4/9/09 = Non-scientific
- B. Assessment Consultants – Drug-Free Workplace Employee Training: 4/28/09 = Non-scientific
- C. Veterinary Dental Concepts, LLC – Periodontal Disease: 5/5/09 = 2 hours
- D. Central Ohio Veterinary Medical Association – “Getting the most out of your Biopsy”, “Good Specimen Collection Technique: 5/5/09 = 2.5 hours
- E. Pfizer – Dentistry for Veterinarians or Technicians: 6/14/09 = 6 hours
- F. Puppy Works – Treatments for Troubled Canine: 7/12/09 = 5.5 hours
- G. Toledo VMA/Merial Ltd. – Recombinant Vaccines: 8/18/09 = 1 hour

Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-aye, Dr. Hearst-aye, Ms. Jessen-aye.

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- **Correspondence Received:**

- A. The Board reviewed correspondence from Helen Kerr regarding case # 08-09-133. No response required.
- B. The Board reviewed correspondence from Tim Jordan asking if Ohio plans to implement a policy requiring veterinarians to provide their clients with a list of side effects of a drug being prescribed or administered to a pet. The Board's response is not to their knowledge.
- C. The Board acknowledged correspondence from Terrie Sizemore, DVM.
- D. The Board reviewed correspondence from Harold L. Brown, DVM asking if certified euthanasia technicians in the State of Florida can become certified in the State of Ohio with the courses they completed in Florida. The Board directed Ms. Stir to file a change to the current Rule deleting the requirement that the course must be taken in Ohio to become certified in Ohio. Until the rule is amended and effective, an individual will have to complete the course in Ohio to become certified.
- E. The Board reviewed correspondence from Jeanne Green, RVT seeking guidance regarding Continuing Education Credits. Question #1: Who can present these seminars – does it have to be a DVM or RVT? No, the speakers are not limited to DVM's and/or RVT's as long as they have sufficient knowledge of the course material. Question #2: Do they have to be directly Veterinary related? Yes, the courses have to be related to the practice of veterinary medicine such as electrolyte management or ultrasound techniques which apply to both human and animal medicine. Question #3: What sort of documentation do we need to keep or submit to you to track these seminars, wet labs etc? All CE requests need to be approved by the Board. It is up to the licensee to keep track of his/her CE hours. Upon renewal, the licensee must complete and legally affirm the CE reporting form that is attached to their renewal application.

- **Matters Tabled at Previous Meeting:**

- A. PhD practitioner: Dr. Small moved to request clarification from the veterinary practice regarding the role of the PhD practitioner in their practice. Ms. Jessen seconded the motion. The motion passed by the following roll call vote: Mr. Smith-aye, Dr. Mach-aye, Dr. Small-aye, Dr. Gitz-abstain, Dr. Hearst-abstain, Ms. Jessen-aye.

- **Old Business:**

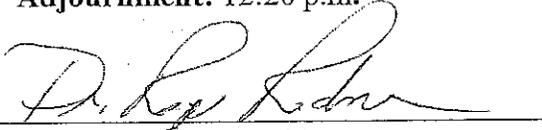
- A. The Board reviewed the response from Wayne County Humane Society regarding the requirement for a Veterinary Business Facility License. The Board directed Ms. Stir to reply with the understanding that if veterinary services are offered even once to animals not owned by the humane society they are required to have a veterinary business facility license. The law does not prohibit a veterinarian from renting space from the humane society, but does prohibit the facility from collecting money on behalf of the veterinary services provided to animals not owned by the humane society.

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- **Next Board Meeting:**

Dr. Redman acknowledged that the next Board meeting will be held July 8, 2009, 8:30 a.m. in the Board room located at 77 South High Street, 31st Floor, Columbus, Ohio.

- **Adjournment:** 12:20 p.m.



Dr. Roger Redman, President

7/8/09
Date

Attested to by:



Theresa Stir, Esq.
Executive Director



The Ohio Veterinary Medical Licensing Board



77 South High Street, 16th Floor, Columbus, Ohio 43215-6108

June 11, 2009

Terrie Sizemore, RN, DVM
P.O. Box 23
Sullivan, OH 44880

Re: Case 05-05-067

Dear Dr. Sizemore:

On or about May 21, 2009, the Ohio Veterinary Medical Licensing Board ("Board") received notification that your case #05-05-067 before the Court of Common Pleas of Franklin County was dismissed with prejudice and the case was remanded back to the Board. At the June 10, 2009 Board meeting, since the Board now had jurisdiction over the matter, the Board moved and approved the dismissal of case #05-05-067 as they indicated to you they would in a letter dated November 21, 2007.

Thank you for your cooperation in this matter before the Board

Respectfully,

Theresa Stir
Executive Director

28 Ohio St. 2d 224, *, 277 N.E.2d 419, **;
1972 Ohio LEXIS 520, ***; 57 Ohio Op. 2d 464

THE STATE, EX REL. **BORSUK**, APPELLEE v. CITY OF **CLEVELAND** ET AL., APPELLANTS

No. 71-168

Supreme Court of Ohio

28 Ohio St. 2d 224; 277 N.E.2d 419; 1972 Ohio LEXIS 520; 57 Ohio Op. 2d 464

January 5, 1972, Decided

PRIOR HISTORY: [***1] APPEAL from the Court of Appeals for Cuyahoga County.

Robert J. Borsuk, appellee herein, passed an examination for the position of patrolman in the Division of Police, Department of Public Safety of the city of Cleveland. Upon certification of his name to the appointing authority, he was advised on September 15, 1965, of his appointment as a patrolman, effective September 16, 1965. He was administered the appropriate oath of office on September 15, 1965.

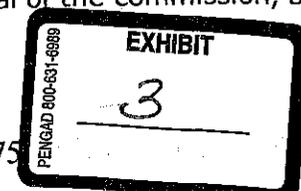
On September 15, 1966, relator was advised in writing by the Director of Public Safety, a respondent-appellant herein, that his employment was terminated. Simultaneously therewith, the director forwarded a letter to the Civil Service Commission advising it that relator's employment had been terminated, as of September 15, 1966, because of unsatisfactory service during his probationary period. On September 19, 1966, relator was advised by the Civil Service Commission that the termination of his employment was approved by the commission.

On September 29, 1966, relator requested a hearing before the Civil Service Commission on the termination of his employment. At the same time, relator filed a notice of appeal to the Court of [***2] Common Pleas of Cuyahoga County, the appeal being subsequently dismissed by relator. Upon a hearing before the commission on October 3, 1966, the commission determined that relator had served one day more than the one-year probationary period and rescinded its former order of approval of the termination, substituting therefor an order disapproving the termination of relator's employment.

On October 7, 1966, the Director of Public Safety requested a rehearing by the Civil Service Commission. On October 11, 1966, the Director of Public Safety filed a notice of appeal to the Court of Common Pleas of Cuyahoga County from the October 3, 1966, decision of the commission. On October 17, 1966, the commission refused a rehearing on the ground that it lacked jurisdiction because of the appeal to court by the Director of Public Safety and the earlier appeal of relator.

At the hearing before the Common Pleas Court on the appeal of the director, the parties agreed to submit an initial issue of whether the court had jurisdiction to entertain an appeal by an appointing authority. The court, on April 15, 1969, entered a judgment that the court was without jurisdiction, ordered the appeal dismissed, [***3] and further ordered that relator be reinstated to his former position. The judgment was affirmed on May 11, 1970, by the Court of Appeals and a motion to certify the record was overruled by this court on September 24, 1970.

Section 131, Chapter 27 of the Charter of the city of Cleveland, provides, in part, that at the end of the probationary period, the appointing officer shall transmit to the commission a record of the employee's service certifying that such service has been satisfactory or unsatisfactory, and if such service is unsatisfactory the employee may, with the approval of the commission, be removed.



Section 121, Chapter 25 of the Charter of the city of Cleveland, provides for an appeal to the Civil Service Commission by any person in the classified service who has been dismissed. The commission is authorized to "affirm, disaffirm or modify" the judgment of the director of the department involved and it is provided further that the "judgment of the commission in the matter shall be final."

On November 2, 1970, Borsuk filed this mandamus action in the Court of Appeals, alleging that respondents, city of Cleveland, the Mayor and the Director of Public Safety, although [***4] requested, had refused to reinstate him to his position. Relator sought an order requiring respondents to reinstate him to his position of patrolman in the Cleveland Police Department and for his wages due him as an emolument of his office. The court entered judgment granting the relief sought. Respondents appeal as a matter of right to this court.

DISPOSITION: *Judgment affirmed.*

CASE SUMMARY:

PROCEDURAL POSTURE: Appellants, a city, its mayor, and the public safety director, sought review of a judgment of the Court of Appeals, Cuyahoga County (Ohio), which granted relief to appellee patrolman in his action for mandamus to require appellants to reinstate him to his position in the city police department.

OVERVIEW: The patrolman appealed his termination to the Civil Service Commission, which issued an order disapproving the termination. The public safety director requested a rehearing with the Commission and filed a notice of appeal with a trial court. The commission refused a rehearing on the ground that it lacked jurisdiction because of the appeal to the trial court. The trial court held that it was without jurisdiction, dismissed the appeal, and ordered that the patrolman be reinstated to his former position. Appellants asserted that the court of appeals erred in issuing the writ of mandamus for the reason that the patrolman did not show a clear right to the relief sought. Appellants argued that the trial court was without authority to order reinstatement when it had no jurisdiction of the appeal. The court held that the Commission did not retain rehearing authority because a court appeal had been filed. The order of the Commission disapproving the patrolman's termination had become final by exhaustion of appellate remedies in the direct appeal from the order, and appellants were under a clear legal duty to reinstate the patrolman to his employment.

OUTCOME: The court affirmed the judgment of the court of appeals issuing a writ of mandamus to compel appellants to reinstate the patrolman.

CORE TERMS: mandamus, disapproving, expiration, reinstatement, jurisdiction to reconsider, statutory authority, jurisdiction to modify, municipal

LEXISNEXIS(R) HEADNOTES

Administrative Law > Agency Adjudication > Review of Initial Decisions

Administrative Law > Judicial Review > Reviewability > Final Order Requirement

Administrative Law > Judicial Review > Reviewability > Jurisdiction & Venue

HN1 ↓ Absent specific statutory authority or rule, official boards or administrative agencies have jurisdiction to reconsider decisions only until the actual institution of a court appeal therefrom or until expiration of the time for appeal.

Civil Procedure > Remedies > Writs > Common Law Writs > Mandamus

HN2 ↓ The office of the remedy of mandamus is to compel the performance of a duty specifically enjoined by law.

HEADNOTES

Municipal corporations -- Civil service -- Commission has jurisdiction to reconsider decisions -- Until appeal or expiration of time therefor -- Dismissal of employee in classified service -- Commission order disapproving dismissal, final -- Mandamus lies to compel reinstatement of employee.

SYLLABUS

1. An administrative board or agency, including a municipal civil service commission, has jurisdiction to reconsider its decisions until the actual institution of a court appeal therefrom or until expiration of the time for appeal, in the absence of specific statutory limitation to the contrary.
2. Where the employment of a police officer in the classified service of a municipality is terminated, and, upon a hearing requested by the employee before the Civil Service Commission, the commission disaffirms [***5] such termination and that order becomes final upon the exhaustion of the remedy of appeal, a writ of mandamus will issue to compel reinstatement of the employee by the municipality.

COUNSEL: *Messrs. Barragate & Barragate and Mr. Phillip C. Barragate, for appellee.*

Mr. Clarence L. James, Jr., director of law, Mr. Jay L. Loeb and Mr. William D. Moore, for appellants.

JUDGES: STEPHENSON, J. O'NEILL, C. J., SCHNEIDER, HERBERT, BRENNEMAN, CORRIGAN and LEACH, JJ., concur. BRENNEMAN, J., of the Ninth Appellate District, sitting for DUNCAN, J. JUDGE BRENNEMAN of the Court of Appeals was, pursuant to Section 2 of Article IV of the Constitution of Ohio, duly directed by the Chief Justice "to sit with the justices of the Supreme Court in the place and stead of" JUSTICE DUNCAN and JUDGE BRENNEMAN did so and heard and considered this cause prior to the resignation of JUSTICE DUNCAN on November 28, 1971. STEPHENSON, J., of the Fourth Appellate District, sitting for STERN, J.

OPINION BY: STEPHENSON

OPINION

[*226] [**420] Appellants assert, in substance, that the court below erred in issuing the writ of mandamus for [*227] the reason that relator did not show a clear right [***6] to the relief sought.

This assertion is supported by an argument that since the Common Pleas Court held, in the appeal by respondents from the Civil Service Commission order, that the court had no jurisdiction of the appeal, the court should have dismissed the appeal and was without authority to order reinstatement. It is then argued that since the judgment could go no further than to order a dismissal for lack of jurisdiction, the Civil Service Commission retained jurisdiction to entertain the request for rehearing filed by [**421] respondents, and, until the commission ruled, the Civil Service Commission order disapproving of relator's dismissal was not final and a basis for mandamus relief.

Whatever merit may exist in the contention that the portion of the Common Pleas Court judgment ordering reinstatement was a nullity, appellants' conclusion that the Civil Service Commission retained rehearing authority is without merit in light of the prior decisions of this court.

In *Diltz v. Crouch* (1962), 173 Ohio St. 367, an issue was presented to this court as to the authority of the Board of Liquor Control to modify an order of revocation after an appeal had been taken to [***7] court and the order affirmed. In holding that the board lacked such authority, it was reasoned that, ^{HN1} absent specific statutory authority or rule, official boards or administrative agencies have jurisdiction to reconsider decisions only *until the actual institution of a court appeal therefrom or until expiration of the time for appeal*. Reliance was placed upon the decisions of this court announcing the same rule in *National Tube Co. v. Ayres* (1949), 152 Ohio St. 255 (rehearing authority of Board of Tax Appeals); *Mariemont v. Schaefer* (1961), 171 Ohio St. 481; and *State, ex rel. Maxson, v. Bd. of County Commrs.* (1958), 167 Ohio St. 458 (rehearing authority of county commissioners in annexation proceedings).

Of particular relevance here is a claim raised by plaintiffs in *Diltz* that since, on appeal, courts have no jurisdiction over the penalty imposed by the Board of Liquor [*228] Control jurisdiction to modify must rest with the board. In answer to the claim, the opinion states:

"* * * And we concede that it does -- up to the point that an appeal is taken from the imposition of the penalty on the time for appeal has expired. But we do not agree [***8] that, merely because a court has no jurisdiction to modify a penalty, the board, therefore, *must* have that jurisdiction ad infinitum."

In *State, ex rel. Prayner, v. Indus. Comm.* (1965), 2 Ohio St. 2d 120, the *Diltz* decision was cited as authority for a holding that the Industrial Commission has control over its orders until the actual institution of an appeal therefrom or until the expiration of the time for such an appeal.

Relator asserts in his brief that there exists no specific authority either in the Charter of the city of Cleveland or Rules of the Civil Service Commission as to reconsideration authority by the commission, and respondents have cited none to this court.

At the time of hearing of this cause below, the order of the Civil Service Commission disapproving the termination of relator's employment had become final by exhaustion of appellate remedies in the direct appeal from the order. ^{HN2} The office of the remedy of mandamus is to compel the performance of a duty specifically enjoined by law. *State, ex rel. Brophy, v. Crawford* (1934), 127 Ohio St. 580; *State, ex rel. Selected Properties, v. Gottfried* (1955), 163 Ohio St. 469; *Cleveland, ex rel. Neelon, v. Locher* (1971), 25 Ohio St. 2d 49.

Under the facts of this case, respondents were under a clear legal duty to reinstate relator to his employment, and the Court of Appeals was correct in the issuance of a writ of mandamus to compel performance of that duty.

Judgment affirmed.

CONCUR BY: LEACH

CONCUR

[*229] [**422] LEACH, J., concurring.

While I am in essential agreement with the opinion by Judge Stephenson, I would also place

emphasis on the fact that, although one branch of municipal government cannot appeal to the courts from a ruling by another branch of the same government, in the absence of specific statutory authority, the Director of Public Safety of Cleveland by purporting to appeal the order of the Cleveland Civil Service Commission of October 3, 1966, very effectively precluded an orderly hearing by the commission of the director's request for rehearing. Moreover, whether the reasons stated by the commission in refusing a rehearing on October 17, 1966, were or were not legally sound, the inescapable fact is that it did refuse a rehearing. Thus, the rehearing application is not still pending before the commission awaiting decision, as respondents [***10] assert, and the order of October 3, 1966, has long since become a final order of the commission.

Source: **Legal > / . . . / > Federal & State Cases, Combined**

Terms: **name(borsuk and cleveland)** (Suggest Terms for My Search)

View: Full

Date/Time: Monday, April 9, 2012 - 8:51 AM EDT

* Signal Legend:

 - Warning: Negative treatment is indicated

 - Questioned: Validity questioned by citing refs

 - Caution: Possible negative treatment

 - Positive treatment is indicated

 - Citing Refs. With Analysis Available

 - Citation information available

* Click on any *Shepard's* signal to *Shepardize*® that case.

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