



## Ohio Revised Code

### Section 3.16 Suspension of local official charged with felony relating to official conduct.

Effective: March 23, 2015

Legislation: House Bill 10 - 130th General Assembly

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(A) As used in this section:

(1) "Prosecuting attorney" means the prosecuting attorney of the county in which a public official who is charged as described in division (B) of this section serves.

(2) "Public official" means any elected officer of a political subdivision as defined in section 2744.01 of the Revised Code. "Public official" does not include a judge of a court of record.

(B)(1) If a public official is charged with a felony in a state or federal court and if the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney with responsibility to prosecute the case determines that the felony relates to the public official's administration of, or conduct in the performance of the duties of, the office of the public official, the attorney general, if the attorney general is prosecuting the case, or prosecuting attorney with responsibility to prosecute the case shall transmit a copy of the charging document to the chief justice of the supreme court with a request that the chief justice proceed as provided in division (C) of this section. If the attorney general or the prosecuting attorney transmits a copy of the charging document to the chief justice, a copy also shall be sent to the attorney general if the prosecuting attorney transmits the copy to the chief justice or to the prosecuting attorney of the county in which the public official holds office if the attorney general transmits the copy to the chief justice.

(2) Upon transmitting a copy of a charging document and a request to the chief justice of the supreme court under division (B)(1) of this section, the attorney general or prosecuting attorney shall provide the public official with a written notice that, not later than fourteen days after the date of the notice, the public official may file with the attorney general or prosecuting attorney, whichever sent the notice, a written statement either voluntarily authorizing the attorney general or prosecuting attorney to prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office or setting forth the reasons why the public official should not be



suspended from office.

If the public official voluntarily authorizes the attorney general or prosecuting attorney to prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office as described in this division, the attorney general or prosecuting attorney shall prepare a judgment entry for the judge presiding in the case to provisionally suspend the public official from office immediately upon receipt of the judgment entry and shall notify the chief justice of the supreme court of the provisional suspension. Upon receipt of the judgment entry, the judge presiding in the case shall sign the judgment entry and file the signed judgment entry in the case. The signing and filing of the judgment entry provisionally suspends the public official from office. The attorney general's or prosecuting attorney's request to the chief justice that was made under division (B)(1) of this section remains applicable regarding the public official, and the chief justice shall establish a special commission pursuant to division (C)(1) of this section. A provisional suspension imposed under this division shall remain in effect until the special commission established by the chief justice enters its judgment under division (C)(3) of this section. After the special commission so enters its judgment, divisions (C)(3) and (4) of this section shall govern the continuation of the suspension. Division (E) of this section applies to a provisional suspension imposed under this division.

If the public official files a written statement setting forth the reasons why the public official should not be suspended from office, the public official shall not be provisionally suspended from office, and the attorney general or prosecuting attorney, whichever sent the notice to the public official, shall transmit a copy of the public official's written statement to the chief justice of the supreme court. The attorney general's or prosecuting attorney's request to the chief justice that was made under division (B)(1) of this section remains applicable regarding the public official, and the chief justice shall establish a special commission pursuant to division (C)(1) of this section.

(C)(1) Not sooner than fourteen days after the chief justice's receipt of the attorney general's or prosecuting attorney's request under division (B)(1) of this section, the chief justice shall establish a special commission composed of three retired justices or judges of a court of record. A special commission established under this division is an administrative agency. The chief justice shall appoint the members of the special commission and shall provide to the special commission all documents and materials pertaining to the matter that were received from the attorney general or prosecuting attorney under division (B)(1) or (2) of this section. At least one member of the special



commission shall be of the same political party as the public official. Members of the special commission shall receive compensation for their services, and shall be reimbursed for any expenses incurred in connection with special commission functions, from funds appropriated to the attorney general's office.

(2) Once established under division (C)(1) of this section, a special commission shall review the document that charges the public official with the felony, all other documents and materials pertaining to the matter that were provided by the chief justice under division (C)(1) of this section, and the facts and circumstances related to the offense charged. Within fourteen days after it is established, the special commission shall make a preliminary determination as to whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office. Upon making the preliminary determination, the special commission immediately shall provide the public official with notice of the preliminary determination. The notice may be in writing, by telephone, or in another manner. If the preliminary determination is that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, does not adversely affect the functioning of the office or does not adversely affect the rights and interests of the public, the preliminary determination automatically shall become the special commission's final determination for purposes of division (C)(3) of this section. If the preliminary determination is that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of the office or adversely affects the rights and interests of the public and that the public official should be suspended from office, the notice shall inform the public official that the public official may contest the preliminary determination by filing with the special commission, within fourteen days after the date of the notice to the public official, a notice contesting the determination.

If the public official files a notice contesting the preliminary determination within fourteen days after the date of the notice to the public official, the public official may review the reasons and evidence for the determination and may appear at a meeting of the special commission to contest the determination and present the public official's position on the matter. The meeting of the special commission shall be held not later than fourteen days after the public official files the notice contesting the preliminary determination. The public official has a right to be accompanied by an



attorney while appearing before the special commission, but the attorney is not entitled to act as counsel or advocate for the public official before the special commission or to present evidence or examine or cross-examine witnesses before the special commission. At the conclusion of the meeting, the special commission shall make a final determination as to whether the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of the office or adversely affects the rights and interests of the public and, as a result, whether the public official should be suspended from office, and shall proceed in accordance with division (C)(3) of this section.

If the public official does not file a notice contesting the determinations within fourteen days after the date of the notice to the public official, the special commission's preliminary determination automatically shall become its final determination for purposes of division (C)(3) of this section.

Notwithstanding anything to the contrary in section 121.22 of the Revised Code, all meetings of the special commission shall be closed to the public. Notwithstanding anything to the contrary in section 149.43 of the Revised Code, the records of the special commission shall not be made available to the public for inspection or copying until the special commission issues its written report under this division.

(3) Upon making the final determination described in division (C)(2) of this section regarding a public official who is charged with a felony, including, if applicable, conducting a meeting pursuant to that division for the public official to contest the preliminary determination, the special commission shall issue a written report that sets forth its findings and final determination. The special commission shall send the report by certified mail to the public official, the attorney general if the attorney general is prosecuting the case or the prosecuting attorney with responsibility to prosecute the case, whichever is applicable, and any other person that the special commission determines to be appropriate. Upon the issuance of the report, one of the following applies:

(a) If the special commission in its final determination does not determine that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public, the special commission shall include in the report a statement to that effect, and the public official shall not be suspended from office. If the public official was provisionally



suspended from office under division (B)(2) of this section, the provisional suspension shall terminate immediately upon the issuance of the report.

(b) If the special commission in its final determination determines that the public official's administration of, or conduct in the performance of the duties of, the official's office, as covered by the charges, adversely affects the functioning of that office or adversely affects the rights and interests of the public, the special commission shall include in the report a holding that the public official be suspended from office. The holding that the public official be suspended from office and the suspension take effect immediately upon the special commission's issuance of the report. If the public official was provisionally suspended from office under division (B)(2) of this section, the holding that the public official be suspended from office shall continue the suspension immediately upon the special commission's issuance of the report. The report and holding shall have the same force and effect as a judgment of a court of record.

(4) A suspension imposed or continued under division (C)(3) of this section shall continue until one of the following occurs:

(a) The public official is reinstated to office by an appeal as provided in division (D) of this section;

(b) All charges are disposed of by dismissal or by a finding or findings of not guilty;

(c) A successor is elected and qualified to serve the next succeeding term of the public official's office.

(D) If a special commission issues a written report and holding pursuant to division (C)(3)(b) of this section that suspends a public official from office or that continues a provisional suspension imposed under division (B)(2) of this section, the public official may appeal the report and holding to the supreme court. The public official shall take the appeal by filing within thirty days of the date on which the report is issued a notice of appeal with the supreme court and the special commission. Unless waived, notice of the appeal shall be served upon all persons to whom the report was sent under division (C)(3) of this section. The special commission, upon written demand filed by the public official, shall file with the supreme court, within thirty days after the filing of the demand, a certified transcript of the proceedings of the special commission pertaining to the report and the



evidence considered by the special commission in making its decision.

The supreme court shall consider an appeal under this division on an expedited basis. If the public official appeals the report and holding, the appeal itself does not stay the operation of the suspension imposed or continued under the report and holding. If, upon hearing and consideration of the record and evidence, the supreme court decides that the determinations and findings of the special commission are reasonable and lawful, the court shall affirm the special commission's report and holding, and the suspension, and shall enter final judgment in accordance with its decision. If the public official subsequently pleads guilty to or is found guilty of any felony with which the public official was charged, the public official is liable for any amount of compensation paid to the official during the suspension, with the liability relating back to the date of the original suspension under the special commission's report and holding, and the amount of that liability may be recovered as provided in division (G) of this section. If, upon hearing and consideration of the record and evidence, the supreme court decides that the determinations and findings of the special commission are unreasonable or unlawful, the court shall reverse and vacate the special commission's report and holding, and the suspension, reinstate the public official, and enter final judgment in accordance with its decision.

The clerk of the supreme court shall certify the judgment of the court to the special commission. Upon receipt of the judgment, the special commission shall certify the judgment to all persons to whom the special commission's report was certified under division (C)(3) of this section and shall certify the judgment to all other public officials or take any other action in connection with the judgment as is required to give effect to it.

(E)(1) Any public official suspended from office under this section shall not exercise any of the rights, powers, or responsibilities of the holder of that office during the period of the suspension. The suspended public official, however, shall retain the title of the holder of that office during the period of the suspension and continue to receive the compensation that the official is entitled to receive for holding that office during the period of the suspension, until the public official pleads guilty to or is found guilty of any felony with which the public official is charged, or until one of the conditions in division (C)(4)(a), (b), or (c) of this section occurs.

(2) If the public official suspended under this section is an elected county official, the board of



county commissioners may appoint a person in the official's office as the acting officer to perform the suspended public official's duties between the date of the signing and filing of the judgment entry suspending the elected county official and the time at which the interim replacement official appointed under division (E)(3)(a) or (b) of this section qualifies and takes the office.

(3)(a) Except as provided in division (E)(3)(b) of this section, for the duration of the public official's suspension, an interim replacement official shall be appointed by the county central committee of the political party that nominated the suspended public official if the suspended public official is an elected county official, to perform the suspended public official's duties. Not less than five nor more than forty-five days after the suspension of a public official that is an elected county official, the county central committee shall meet to appoint the interim replacement official. Not less than four days before the date of the meeting, the chairperson or secretary of the county central committee shall send by first class mail to each member of the committee a written notice that states the time and place of the meeting and the purpose thereof. The approval of a majority of the members of the county central committee present at the meeting is required to appoint the interim replacement official.

(b) If the suspended public official is an elected county official, except for a county commissioner, who was elected as an independent candidate, the board of county commissioners shall appoint the interim replacement official. If the suspended public official is a county commissioner who was elected as an independent candidate, the prosecuting attorney and the remaining county commissioners, by majority vote, shall appoint the interim replacement official.

(4) For the duration of the public official's suspension, an interim replacement official shall be appointed by the probate judge of the court of common pleas if the suspended public official is an elected official of a municipal corporation, township, school district, or other political subdivision, to perform the suspended public official's duties.

(5) An acting officer appointed under division (E)(2) of this section or an interim replacement official appointed under division (E)(3) or (4) of this section shall be certified to the county board of elections and the secretary of state by the county central committee, probate judge of the court of common pleas, or board of county commissioners that made the appointment. The acting officer or interim replacement official so certified shall have all of the rights, powers, and responsibilities of,





and shall be entitled to the same rate of pay as, the suspended public official. The acting officer or interim replacement official shall give bond and take the oath of office. If the office of the suspended public official becomes vacant during the period of suspension, a public official shall be appointed or elected to fill such vacancy as provided by law. If a regular election is to occur during the period of suspension, a public official shall be elected as provided by law.

(F) A person appointed as an acting or interim replacement prosecuting attorney shall meet the qualifications to hold the office of a prosecuting attorney under section 309.02 of the Revised Code. A person appointed as an acting or interim replacement sheriff shall meet the requirements to hold the office of sheriff prescribed by section 311.01 of the Revised Code. A person appointed as an acting or interim replacement coroner shall meet the requirements to hold the office of coroner prescribed by section 313.02 of the Revised Code. And a person appointed as an acting or interim replacement county engineer shall meet the requirements to hold the office of county engineer prescribed by section 315.02 of the Revised Code.

(G) A political subdivision may file a civil action in the appropriate court to recover from any former public official of the political subdivision the amount of compensation paid to that former public official in accordance with this division from the date of the former public official's suspension to the date the former public official pleads guilty to or is found guilty of any felony with which the former public official was charged.