As Reported by the House Judiciary Committee

125th General Assembly
Regular Session
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Sub. H. B. No. 252

Representative Cates

A B I L L

To amend section 309.05 of the Revised Code to regulate when motions for judgment on the pleadings, motions to dismiss, and motions for summary judgment may be filed in actions to remove a prosecuting attorney.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 309.05 of the Revised Code be amended to read as follows:

Sec. 309.05. On complaint, in writing, signed by one or more taxpayers, containing distinct charges and specifications of wanton and willful neglect of duty or gross misconduct in office by the prosecuting attorney, supported by affidavit and filed in the court of common pleas, the court shall assign the complaint for hearing and shall cause reasonable notice of ~~such~~ the hearing to be given to the prosecuting attorney of the time fixed by the court for the hearing. At the time so fixed, or to which the court adjourns the hearing, ~~such~~ the court shall hear the evidence adduced by the complainants and the prosecuting attorney. The court may consider motions for judgment on the pleadings made pursuant to Civil Rule 12, motions to dismiss made pursuant to Civil Rule 41, and motions for summary judgment made pursuant to

Civil Rule 56 that are filed before the hearing. If it appears that the prosecuting attorney has willfully and wantonly neglected to perform ~~his~~ the prosecuting attorney's duties, or has been guilty of gross misconduct in office, the court shall remove ~~him~~ the prosecuting attorney from office and declare ~~such~~ the office vacant. Otherwise the complaint shall be dismissed, and the court shall render judgment against the losing party for costs.

If a complaint to remove a prosecuting attorney is dismissed because the complainant or complainants failed to file an affidavit in support of the complaint, the dismissal shall be without prejudice.

Section 2. That existing section 309.05 of the Revised Code is hereby repealed.