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1. VACANCY—CLERK, COURT OF COMMON PLEAS—TERM OF CLERK PRO TEMPORE ENDS WHEN SUCCESSOR ELECTED AND QUALIFIED—ELECTION OF SUCCESSOR SHALL BE AT FIRST GENERAL ELECTION FOR OFFICE VACATED WHICH OCCURS MORE THAN THIRTY DAYS AFTER OCCURRENCE OF VACANCY.
2. CANDIDATES FOR VACANT OFFICE SHALL SEEK ELECTION FOR UNEXPIRED TERM OF ORIGINAL CLERK OF COMMON PLEAS COURT AND NOT FOR FULL FOUR YEAR TERM.

SYLLABUS:

1. The term of the clerk pro tempore of the court of common pleas ends when his successor is elected and qualified. Said election of the successor shall be at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred.

2. The candidates for said office shall run for the unexpired term of the original clerk of common pleas court and not for the full four year term.

Columbus, Ohio, July 29, 1949

Hon. James R. Freeman, Prosecuting Attorney
Vinton County, McArthur, Ohio

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

“I have been requested to obtain an opinion from your office concerning the election of the Clerk of the Common Pleas Court.

“The facts are that at the November election 1948, a Clerk of the Common Pleas Court was elected and took office on January 3rd, 1949. Shortly thereafter he passed away and the County Commissioners appointed a Clerk pro tempore in accordance with G. C. Sec. 2870, which is quoted:

“Vacancy, how filled,—When a vacancy occurs in the office of clerk of the court of the common pleas, the county commissioners shall appoint a clerk pro tempore, who shall give bond and take the oath of office prescribed for the clerk-elect. If the commissioners are not in session when such vacancy occurs, the county auditor shall forthwith give written notice thereof to each of them, and thereupon they shall meet and make the appointment. If the commissioners fail to make an appointment for ten days after they severally have had such notice of vacancy, the appointment shall be made by the county auditor.’

“The questions we would like to have answered are:

1. When does the term of the clerk pro tempore end?
2. If it ends in 1950, will the candidates for said office run for the unexpired term in 1950, or will they run for the full term of four years?”

Section 2867, General Code, reads as follows:

“There shall be elected quadrennially in each county, a clerk of the court of common pleas, who shall assume office on the first Monday of January next after his election and who shall hold said office for a period of four years.”

Section 10, General Code, reads as follows:

“When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified. Unless otherwise provided by law, such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred. When an elected candidate has failed to qualify for the office to which he has been elected, the office shall be filled as in the case of a vacancy. Until so filled, the incumbent officer shall continue to hold the office. This section shall not be construed to postpone the time for such election beyond that at which it would have been held had no such vacancy occurred, nor to affect the official term, or the time for the commencement thereof, of any person elected to such office before the occurrence of such vacancy.”

Section 2870, General Code, which you have quoted in your inquiry provides for the filling of the vacancy of the office of clerk of the court

of common pleas. Since nothing is specifically provided as to the term of the clerk pro tempore, Section 10, General Code, governs. Note that Section 10, General Code, says that the appointee shall hold office until his successor is elected and qualified. It says further that such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred.

In the case of *The State, ex rel. Harsha v. Troxel et al.*, Board of Elections of Scioto County, 125 O. S. 235, it was held as follows:

“The successor of an appointee appointed to fill a vacancy in the office of county auditor, which vacancy occurred more than thirty days before the next general election at which county officers can be voted for, must be elected at the next general election for county officers.”

This case dealt with a county auditor whose term is four years, the same as clerk of court. The facts of the case are the same and both offices are county offices. The auditor was elected in November, 1930, for four years. He qualified and entered office until July 25, 1931 when he resigned. The next primary election for *county* officers was on May 10, 1932, more than thirty days from when the vacancy occurred. The court said that candidates for auditor could file their declarations and petitions at this election even though the auditor would not ordinarily be elected at this time because of his four year term. Section 10, General Code, mentions the “first general election.” Section 4785-4, General Code, provides for *general* elections of *county* officers in even-numbered years. The November, 1950 election is a general election for county officers. Therefore, the term of this clerk pro tempore runs until his successor is elected at the 1950 election.

In *The State, ex rel. McKee v. Rice*, 147 O. S. 505, the above mentioned Harsha case was quoted with approval. It also dealt with substantially the same facts except that it was in regard to a county engineer.

Again, in *The State, ex rel. Grace v. Board of Elections of Franklin County*, 149 O. S. 173, the Harsha case was cited and approved. The Grace case further substantiated the fact that in a situation described in your inquiry that the successor to an appointee of a county office shall be elected at the first general election held on the first Tuesday after the first Monday in November in an even-numbered year when such

election occurs more than thirty days after occurrence of such vacancy. Here, that election will be in 1950 as it is the next general election for county officers and is more than thirty days after the vacancy. Thus, it can be seen that the clerk pro tempore will hold office until his successor is elected and qualified. Also, that such election for successor shall be in 1950 in this situation.

The case of *Harte v. Bode*, 7 O. D. 74, 4 NP 421, held that the clerk pro tempore was to serve the entire unexpired term. However, this was decided under an older statute which was changed by Section 10, General Code. Section 10, General Code, added the statement that the successor of the appointed clerk shall be *elected for the unexpired term*. This unexpired term could only refer to that of the original office holder. Therefore, in this case, under Section 10, General Code, the appointee holds office only until his successor is elected in the 1950 elections and is qualified.

In the 1950 elections the candidates for the above mentioned office will run for the *unexpired* term of the original clerk who was elected in 1948. This can be readily seen from a reading of Section 10, General Code. There it says specifically that "such successor (to the appointee) shall be elected for the *unexpired term* (of the original clerk.)"

(Emphasis and parentheses added.)

It is my opinion that the term of the clerk pro tempore of common pleas court ends when his successor is elected and qualified. Said election of successor shall be in the November, 1950 election in this case. I further believe that the successor shall run for the unexpired term of the original clerk and not for the full four year term.

Respectfully submitted,

HERBERT S. DUFFY,
Attorney General.