

allow a reasonable amount for the performance of such service and the provisions of Section 2856-3 do not in such instance prescribe a limitation in amount binding upon the board of county commissioners."

Section 2495, General Code, which reads:

"The county commissioners may allow a physician or surgeon making a post mortem examination at the instance of the coroner or other officer such compensation as they deem proper",

still contains the provision authorizing the payment for services of a physician or surgeon in the performance of autopsies at the *instance of the coroner*; although in this connection your attention is directed to the fact that Section 2856, General Code, was amended since Section 2495 was enacted, as found in 109 O. L. 543, by adding the last sentence in Section 2856, which in my opinion limits the provisions contained in Section 2495 which authorized an autopsy to be performed at the instance of the coroner, by now requiring authorization therefor by the prosecuting attorney.

Answering your question specifically, I am of the opinion that where the prosecuting attorney authorized an autopsy and a physician or surgeon other than the coroner performed such autopsy on a dead body found in the county, the board of county commissioners may, under Section 2495, General Code, in its discretion allow the physician such a sum as it deems reasonable for the services so performed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

946.

COUNTY COMMISSIONER—VACANCY IN OFFICE—STATUS OF APPOINTEE.

SYLLABUS:

1. *Under Section 2397, General Code, when a vacancy occurs in the office of county commissioner more than thirty days before the next election for state and county officers, a successor must be elected at said election to serve for the unexpired term of the commissioner who was elected to the office.*
2. *Where a county commissioner is appointed to fill a vacancy by the probate judge, auditor and recorder of the county as provided in Section 2397, General Code, such appointee may only serve until his successor is elected and qualified and the fact that the commission of the Governor states that the appointment is for the unexpired term does not effect a change in the law.*

COLUMBUS, OHIO, September 3, 1927.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Receipt is acknowledged of your recent communication which reads as follows:

"One of the county commissioners of this county, elected November, 1926, and who assumed office the first Monday in January of this year, 1927, died with an unexpired term of three years and four months.

As provided by Section 2397, G. C., the Probate Judge, Auditor and Recorder of the county appointed a person to fill the vacancy. The appointee today presented a commission and a bond to me for approval. Both the commission and the bond state that the appointee is to serve the unexpired term of the deceased commissioner. I declined to approve the bond on the ground that the vacancy was to be filled only until a successor was elected at the next general election, which would be in November, 1928. In other words, my contention is that under Section 2397 the Probate Judge, Auditor and Recorder can only appoint a commissioner who shall hold his office until his successor is elected, and that a successor must be elected at the next regular election for state and county officers, which would be in 1928. This must be the correct construction in the light of Section 2396, G. C., which says when a commissioner is elected to fill a vacancy occasioned by the death, and so forth, he shall hold his office for the unexpired term for which his predecessor was elected. In the instant case the appointee was not elected but appointed as provided by Section 2397.

Kindly advise me in the matter as the appointee still insists that by the commission which has been issued to him by the Governor under his appointment by the Probate Judge, Auditor and Recorder, entitles him to serve the full unexpired term of three years and four months."

Section 2395 of the General Code provides as follows:

"The board of county commissioners shall consist of three persons who shall be elected as follows: In the year 1920 three county commissioners shall be elected in each county. The two persons who receive the greatest number of votes shall hold their office from the third Monday of September, 1921, until the first Monday of January, 1925. The third one elected in 1920 shall hold office from the third Monday of September, 1921 to the first Monday of January, 1923. In November, 1922, and quadrennially thereafter, one commissioner shall be elected to take office on the first Monday of January following. In November, 1924, and quadrennially thereafter two commissioners shall be elected to take office on the first Monday of January following. Thereafter such officers shall hold office for the term of four years and until their successors are elected and qualified."

By Section 2396, General Code, it is provided that:

"When a commissioner *is elected* to fill a vacancy occasioned by death, resignation, or removal, he shall hold his office for the unexpired time for which his predecessor was elected." (Italics the writer's)

Since, by the terms of Section 2396, *supra*, the commissioner to be elected at the time hereinafter pointed out is to "hold his office for the unexpired time for which his predecessor was elected" only, the arrangement and times of electing commissioners prescribed by Section 2395, *supra*, are in nowise disturbed by death of the commissioner in question and the election of his successor in accordance with the holding of this opinion.

The death of the county commissioner having occurred after he assumed the office on the first Monday of January, 1927, it is manifest that a vacancy was created.

Special provisions are found for filling such a vacancy in Section 2397, General Code, which reads:

"If a vacancy in the office of commissioner occurs more than thirty days before the next election for state and county officers, a successor shall be elected thereat. If a vacancy occurs more than thirty days before such election or within that time and the interest of the county requires that the vacancy be filled before the election, the probate judge, auditor, and recorder of the county, or a majority of them, shall appoint a commissioner, who shall hold his office until his successor is elected and qualified."

I find the above statute and the kindred Section (2396 General Code), to which you refer, were enacted April 2, 1906 (98 O. L. 272), and have not been changed since that time. I call attention to a former opinion of this department on the subject as found in the Annual Report of the Attorney General for the year 1912, Volume II, page 1442, in which I concur, the syllabus of which reads:

"Under Section 2397 of the General Code, when a vacancy occurs in the office of county commissioner, more than thirty days prior to the next election for state and county officers, the successor must be elected at the said election. Said successor shall serve, under Section 2396 of the General Code, for the unexpired term of his predecessor.

A commissioner pro tem. may be appointed under Section 2397 of the General Code by the probate judge, auditor and recorder of the county, to serve until the successor aforesaid is elected and qualified.

When a commissioner pro tem. is so appointed, the fact that the governor's commission states that the appointment is for the unexpired term, does not effect a change in the law."

Said commission issued to the appointee, like the one in the commission to which you refer, stated that the appointment was for the unexpired term; and as to that situation, in the former opinion it was said:

"The provision for the filling out of the unexpired term written into a commission executed by the governor has no effect as to determining the term of the office. That is governed solely by the statute, and it is a principle too well settled to need citation of authorities that the law and not the commission determines an officer's term. As to certain other county officers the statute provides for a successor pro tem. who fills out the unexpired term, but in the case of county commissioners other provision has been made. This is rendered all the more apparent by a mere reading of Section 2396, General Code, which is as follows:

'When a commissioner is elected to fill a vacancy occasioned by death, resignation, or removal, he shall hold his office for the unexpired time for which his predecessor was elected.'

If the appointee, in case of vacancy, was entitled to hold the full unexpired term there would be no necessity for such a provision as contained in Section 2396, supra, for there would never be a commissioner elected to fill the vacancy."

I am therefore of the opinion that the law is mandatory that a successor to the deceased commissioner be elected to fill the vacancy at the next election for state and county officers, which under the provisions of Section 4826, General Code, will occur on the first Tuesday after the first Monday in November, 1928. The fact that

the commission to which you refer states that the appointment is for the unexpired term does not change the statutory law on the subject, and I am therefore of the opinion that such appointee can only hold the office until the election and qualification of a successor of the deceased commissioner at the November election in 1928. It is my opinion that it would be well to have the bond of the appointee comply with the law as thus expressed, although I am of the opinion that the bond would not be invalid if such change were not made.

Respectfully,
EDWARD C. TURNER,
Attorney General.

947.

BOARDS OF EDUCATION—BOARDS OF ADJOINING SCHOOL DISTRICTS MAY AGREE UPON COST OF JOINT HIGH SCHOOL—NEEDS AFFIRMATIVE VOTE OF 55% OF EACH DISTRICT.

SYLLABUS:

1. *By virtue of the provisions of Section 7669 of the General Code, boards of education of two or more adjoining school districts may agree upon the cost of the construction of a joint high school and the bonds issued for the purpose of such construction need not be in proportion to the tax valuation of the respective districts.*

2. *In submitting the question of a bond issue for the construction of a high school under the provisions of Section 7669, General Code, the ballot should set forth the amount of bonds to be issued by the respective districts and an affirmative vote of at least fifty-five per cent of those voting upon the proposition must be had in each of the districts.*

COLUMBUS, OHIO, September 3, 1927.

HON. SETH PAULIN, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter, as follows:

“The Boards of Education of the Willoughby Rural School and the Willoughby Village School District have heretofore by a majority vote of the full membership of each board united said districts for high school purposes under Section 7669 of the General Code.

It is now necessary to submit to the electors the proposition of issuing bonds to enlarge the joint high school building at an estimated cost of \$100,000.00, and the Boards of Education of the respective school districts are willing to enlarge the present Joint High School Building by each paying \$50,000.00 of the cost of the proposed enlargement.

The tax valuation of the Willoughby Village School District for the year 1926 as listed for taxation is \$7,697,960.00, while the tax valuation of the Willoughby Rural School District for the year 1926, as listed for taxation is \$13,635,150.00.

The precise question I have in mind is first, can the respective Boards of education without reference to the tax valuation arbitrarily agree as to the respective amounts each district will contribute to the proposed enlargement