

1768.

COUNTY SURVEYOR—VACANCY IN OFFICE—TENURE OF SUCCESSOR.

SYLLABUS:

Under the provisions of Sections 2782 and 2785, General Code, in connection with Section 10, General Code, where a vacancy in the office of county surveyor occurs more than thirty days prior to the November election of 1928, a successor shall be elected to fill the unexpired term, whose tenure of office will begin upon qualification after such November election and end on the first Monday of January, 1929. At said November election in 1928, there shall also be elected a county surveyor for the full term of four years beginning on the first Monday of January, 1929.

COLUMBUS, OHIO, February 27, 1928.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Am writing you in regard to our surveyor's situation. He holds office by appointment, the former surveyor having resigned.

Question: Must the ballot at the coming primary contain a place for both short and long term, that is, must it provide for the term from November to January 1st when the new surveyor will qualify?”

The last sentence of Section 2, Article XVII of the Ohio Constitution provides:

“All vacancies in other elective offices (than state offices and members of the General Assembly) shall be filled for the unexpired term in such manner as may be prescribed by law.”

Section 2785, General Code, provides as follows:

“If a vacancy occurs in the office of county surveyor because of death, resignation or otherwise, the county commissioners shall appoint a suitable person county surveyor, who, upon giving bond and taking the oath of office as required of the county surveyor elect, shall enter upon the discharge of the duties of the office.”

It will be observed that the above section makes no provision as to the tenure of office of the appointee.

Section 10 of the General Code provides 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. 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.”

I find no other provision of the General Code with reference to an election of a successor in case of the vacancy in the office of the county surveyor. The provisions of Section 10, General Code, *supra*, therefore will govern in the election of such successor.

In Opinions of the Attorney General for 1916, Vol I, page 873, the syllabus is as follows:

"Where a vacancy in the office of county surveyor occurred in May, 1916, there should be elected at the November election 1916, a person to fill the unexpired term, whose tenure of office will begin upon qualification after such election and end on the day preceding the first Monday of September, 1917. There should also be elected at the same election a surveyor for the term of two years, beginning on the first Monday of September, 1917."

It will be observed since the foregoing opinion was rendered, Section 2782, General Code, has been amended, 110 O. L. 263, changing the time at which the county surveyor takes his office from the first Monday in September after his election to the first Monday of January after his election. This section was again amended, April 21, 1927, 112 O. L. 179, to read as follows:

"There shall be elected in each county at the regular election in 1928, and quadrennially thereafter, a county surveyor who shall assume office on the first Monday in January next after his election and who shall hold said office for a period of four years."

Answering your question specifically, it is therefore my opinion that under the facts stated by you, there should be elected at the coming November election, a county surveyor for the unexpired term ending on the first Monday in January, 1929, and also a county surveyor for the full term of four years, beginning on the first Monday of January, 1929.

There is nothing, however, to prevent the same person being elected for the unexpired term and the full term of four years.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1769.

APPROVAL, BONDS OF ASHTABULA TOWNSHIP RURAL SCHOOL DISTRICT, ASHTABULA COUNTY—\$16,000.00.

COLUMBUS, OHIO, February 27, 1928.

Industrial Commission of Ohio, Columbus, Ohio.