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VACANCY—OFFICE OF MUNICIPAL JUDGE—FILLED BY APPOINTMENT—IF UNEXPIRED TERM ENDS WITHIN ONE YEAR, IMMEDIATELY FOLLOWING DATE OF FIRST GENERAL ELECTION, AFTER OCCURRENCE OF VACANCY, APPOINTEE SHALL HOLD OFFICE FOR FULL UNEXPIRED TERM.

SYLLABUS:

In a case where the office of a municipal judge becomes vacant and such vacancy is filled by appointment, the appointee shall, if the unexpired term for such office ends within one year immediately following the date of the first general election therefor after such vacancy occurs, hold office for the full unexpired term.

Columbus, Ohio, May 7, 1945

Hon. Mathias H. Heck, Prosecuting Attorney  
Dayton 2, Ohio

Dear Sir:

This will acknowledge receipt of your recent communication, which reads as follows:

“We have a situation in Montgomery County involving two unexpired terms occasioned by the resignation of two Judges of the Municipal Court of the City of Dayton, that requires the construction of Section 13 of Article IV of the Constitution of Ohio.

Several persons have indicated their intention to seek the election for the short terms. I would like your construction of Section 13 of Article IV based on the following:

The Municipal Court of the City of Dayton is controlled by Section 1579-46 to Section 1579-89 inclusive of the Code. The Court is a Court of record, and is composed of three judges. The terms are four year terms commencing on January 1st.

Section 1575-50 provides that vacancies arising from any cause shall be filled as prescribed for filling of vacancies of police courts.

Section 4571 of the Code provides that a vacancy in the office of a Judge of the police court shall be filled by the Governor of the State as provided by law.

The vacancies in the Court in the City of Dayton occurred in the Civil branch of the Court. The first vacancy occurred January 6th, 1945, when the incumbent resigned to accept an appointment to another position. The second vacancy occurred March 31st, 1945, when the incumbent resigned to accept an appointment to another position. Both terms were four year terms and expired December 31st, 1945.

The appointment of a successor by the Governor to fill the first vacancy, specifies that the appointee is to serve until a successor is elected and has qualified.

The appointment of a successor by the Governor to fill the second vacancy, specified that the appointee is to serve until the 1st day of January, 1946.

The two resignations occasioned two unexpired terms. The first from January 6th, 1945 to January 1st, 1946. The second from March 31st, 1945 to January 1st, 1946. Does the proper construction of Section 13 of Article IV necessitate, or even permit, an election to fill the vacancy for either of these unexpired terms? Are the present appointees, under their certificates of appointment by the Governor, the proper and legal incumbents in these offices until January 1st, 1946?

I feel that the validity of the Court proceedings subsequent to the November election, and until January 1st, 1946, may be questioned by litigants, and that a ruling from your office will obviate the occurrence of these questions, and also solve the question for the Board of Elections."

Section 13 of Article IV of the Constitution of Ohio, to which you refer, reads as follows:

"In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the

vacancy shall be filled by appointment by the governor, until a successor is elected and has qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy shall have occurred; *provided, however, that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term.*" (Emphasis added.)

You state in your letter that each of the terms in question will expire on December 31, 1945. In such case the language above emphasized has direct application to your question.

Section 1 of Article XVII of the Constitution of Ohio reads:

"Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years."

In the instant case the vacancies occurred on January 6, 1945 and March 31, 1945, respectively. The first general election for the office of municipal judge which will be held after such vacancies occurred will be on the first Tuesday after the first Monday in November, 1945. Therefore, the unexpired terms will end within one year immediately following the date of such election, and consequently the appointments made by the Governor are for the full unexpired term ending December 31, 1945.

The mere fact that the commission in the one case fails to specify that the appointee is to serve until the first day of January, 1946 would in no way affect the right of such appointee to serve until said date.

Therefore, in specific answer to your question, you are advised that in my opinion each of the persons appointed to fill the respective vacancies shall serve for the full unexpired term, and consequently an election for such unexpired terms may not lawfully be held.

Respectfully,

HUGH S. JENKINS

Attorney General