

"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.
* * * "

It is clearly the policy of the state to discourage the needless creation of vacancies in office by providing that any person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless it is otherwise provided in the constitution or laws.

It is said in the case of *The State, ex rel., vs. Howe*, 25 O. S. 588, by McIlvaine, J., "that the General Assembly may provide against the recurrence of vacancies by authorizing incumbents to hold over their terms in cases where the duration of their terms is not fixed and limited by the constitution, and that from this it results that the evils contemplated as likely to result from vacancies in office are guarded against by confining the exercise of the power to fill vacancies to those cases where no one is authorized by law to discharge the public duties; which, we think, is the constitutional scope of that power."

Also in *The State ex rel., vs. McCracken*, 51 O. S. 123, where at page 129, it is observed that:

"The recognized policy of the state is to avoid, if practicable, the creation of a vacancy in an elective office, and where the right to hold over is given in language that is not limited, and the same is not otherwise qualified, a court would hardly be justified in seeking for an unnatural construction by which a limit would be placed upon the right. In contemplation of law there can be no vacancy in an office so long as there is a person in possession of the office legally qualified to perform the duties."

Specifically answering your question, therefore, it is my opinion that since there was no one elected for the short term of county commissioner at the November election of 1928, the said appointed commissioner is entitled to hold said office for the remainder of the unexpired term of his predecessor, under his original appointment.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2919.

SHERIFF—COUNTY COMMISSIONERS MAY REIMBURSE FOR COST OF REPAIRS TO AUTOMOBILE DAMAGED IN PURSUIT OF FLEEING CRIMINAL.

SYLLABUS:

A sheriff or his deputy, who finds it necessary to use his own automobile in the pursuit of a fleeing criminal, may lawfully be paid from county funds for the cost of repairs to the said machine made necessary by reason of an accident which occurs during said pursuit, when said accident is through no fault of the officer.

COLUMBUS, OHIO, November 22, 1928.

HON. LYNN B. GRIFFITH, *Prosecuting Attorney, Warren, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

“On October 13th last, a regularly appointed deputy sheriff of Trumbull County was suddenly called to apprehend a criminal, who was fleeing. This deputy sheriff jumped into his own private automobile, and pursued the fugitive; and, in so doing, his car was wrecked, and completely demolished. The damage was done while the deputy was in the regular performance of his duty as Sheriff, and it was brought about through no negligence of the Sheriff.

The Commissioners of Trumbull County are of the opinion that the Sheriff should be reimbursed for the damage he has suffered, if it may legally be done.

How may the Commissioners take care of this loss?”

Section 2997, General Code, reads in part as follows:

“In addition to the compensation and salary herein provided, the county commissioners shall make allowances quarterly to each sheriff * * * for his actual and necessary expenses incurred and expended in pursuing or transporting persons accused or convicted of crimes and offenses, * * * and all expenses of maintaining horses and vehicles necessary to the proper administration of the duties of his office. * * *”

In accordance with the provisions of Sections 2830 and 2931, General Code, county sheriffs are authorized to appoint and employ necessary deputies and assistants, and by force of Section 9, General Code, such deputies, when appointed and duly qualified, as provided by law, have the same authority as the sheriff, and may perform all and singular, the duties of the sheriff himself. Such deputies when acting in the performance of the administrative duties devolving upon the sheriff's office, act in place of the sheriff, and any expense incurred by such deputies in the performance of those duties are expenses of the sheriff. The sheriff should furnish his deputies with the means of performing their duties, including necessary expenses incurred by the deputies, and for any such necessary expenses he should be reimbursed, as provided in Section 2997, *supra*.

In an opinion of the Attorney General, reported in the Opinions of the Attorney General for 1915, at page 295, it was held:

“Under Section 2997, G. C., county commissioners shall make an allowance to the sheriff for actual and necessary expenses incurred by him in paying for repairs on his automobile and in keeping it in good condition, only when said machine is used by him in the discharge of his official duties.”

In the course of the aforesaid opinion, reference is made by the Attorney General to the case of *State ex rel. Sartain vs. Sayre*, Auditor, decided by the Common Pleas Court of Franklin County, 12 O. N. P. (N. S.), 61, and the case of *State ex rel. Denormandie vs. Commissioners of Mahoning County*, 10 O. C. C. (N. S.), 398, in support of the conclusion that, under and by virtue of Section 2997,

General Code, county commissioners were directed to make allowances to the sheriff for actual and necessary expenses incurred in operating and keeping in repair vehicles owned by himself and used in the performance of his official duties, when such upkeep and repairs were the outgrowth of such use.

It is a fair presumption, from the premise of your inquiry, that Trumbull County furnishes county owned automobiles for the use of the sheriff and his deputies in performing the regular duties of the sheriff's office. If that be true, it of course would preclude the sheriff and his deputies from using their own private automobiles in the performance of the ordinary routine of the office, and being reimbursed for expenses incurred by reason of such use, unless there was an understanding between the sheriff and the commissioners that the privately owned machines of the sheriff and his deputies were to be used to supplement the use of the county machines when necessary.

Be that as it may, however, the pursuit of a fleeing criminal may be, and in most instances is, such an emergency that the immediate need of pursuit would justify the officer in commandeering any available means at his command to pursue and apprehend the criminal. I have no hesitancy in saying that under such circumstances, the deputy sheriff is justified in using his own machine if it be more available than others, whether the county owns machines for that purpose or not, and he should be reimbursed for necessary and proper expenses incurred by reason of such use.

If an accident should occur, which accident is attributable to such official use of the car, by reason of which the automobile is damaged, necessitating repairs, especially if the accident occurs through no negligence of the officer himself, as you indicate was the situation about which you inquire, the officer should be reimbursed for the necessary cost of repairing the automobile. Under this rule, if the automobile were completely demolished, and could not be repaired, the amount that should be allowed to the sheriff would be a sufficient amount to make him whole for his loss which would be the difference between the value of the car before the accident, and afterwards.

I am therefore of the opinion, in specific answer to your question, that the commissioners of Trumbull County may lawfully allow to the sheriff the cost of the necessary repairs to the deputy's automobile which were caused by reason of the accident which occurred while he was pursuing the criminal to which you refer in your inquiry, and if the automobile was completely demolished, the deputy should be made whole.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2920.

BOARD OF EDUCATION—RURAL—MAY PURCHASE RIGHT OF WAY
FROM HIGHWAY TO SCHOOL HOUSE—AUTHORITY TO PETITION
FOR ROAD DISCUSSED.

SYLLABUS:

1. *A rural board of education may, under the provisions of Section 7620, General Code, purchase a right of way leading from a highway to a school house.*
2. *A board of education may properly file a petition with the county commissioners under the provisions of Section 6887, General Code.*