

by law and the contract duly awarded. Also it appears that the laws relating to the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1993.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND J. W. WEEKS, DAYTON, OHIO, FOR THE CONSTRUCTION OF A FISH HATCHERY, XENIA, OHIO, AT AN EXPENDITURE OF \$11,308.50—SURETY BOND EXECUTED BY THE SOUTHERN SURETY COMPANY.

COLUMBUS, OHIO, April 19, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Agriculture, Division of Fish and Game, and J. W. Weeks, of Dayton, Ohio. This contract covers the construction and completion of general contract for construction of Fish Hatchery located at Xenia, Ohio, and calls for an expenditure of eleven thousand three hundred and eight and .50 dollars (\$11,308.50).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond upon which the Southern Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together will all other data submitted in this connection.

Respectfully,  
EDWARD C. TURNER,  
*Attorney Gene. al.*

1994.

SHERIFF—WHO IS ELIGIBLE—SPECIFIC CASE.

SYLLABUS:

1. *By the provisions of Article X, Section 3, of the Constitution of Ohio no person is eligible to the office of sheriff for more than four years in any period of six years.*

2. When a person is elected to an office he is elected for the lawful term of that office and the question of his eligibility must be whether he is qualified to hold that office for the whole of that term, the law not contemplating an election to a part of a term.

3. By the provisions of Article X, Section 3 of the Constitution of Ohio, a person who has served as sheriff for three years and three months in any period of six years, is ineligible to be a candidate for reelection to such office.

COLUMBUS, OHIO, April 20, 1928.

HON. W. J. JONES, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated April 12, 1928, in which you request my opinion upon the following question:

“Our present sheriff, Mrs. M. C., was appointed to fill the unexpired term of her husband, which was one year and three months, and then was elected for another term of two years. Would the holding of the office of sheriff for the unexpired term bar Mrs. C. from holding another term under Article 10, Section 3 of the Constitution of Ohio?”

Article X, Section 3, of the Constitution of Ohio, provides that:

“No person shall be eligible to the office of sheriff, or county treasurer, for more than four years, in any period of six years.”

You will note that, by the provisions of Article X, Section 3, supra, no person is eligible to the office of sheriff for more than four years, in any period of six years. This provision of the Constitution of Ohio does not limit the term of office of sheriff but simply makes the person in office ineligible to serve for more than four years in any period of six years.

Judge Shauck, in the case of *State of Ohio ex rel. Kelley vs. Thrall*, 59 O. S. 368, at page 400, used the following language:

“The word ‘eligible’ in the third section of the 10th article refers as well to qualification to continue in office as to qualification to take office. By its terms the test of eligibility relates to continuance in, or occupancy of, office. It prescribed no qualification peculiar to the taking of office but as to the two offices of sheriff and treasurer, with respect to which there are peculiar reasons for limiting the duration of incumbency, it prescribed such limitation. The term has been usually so interpreted in similar connections. *State ex rel. vs. Murray*, 28 Wis., 96; *Carson vs. McPhetridge*, 15 Ind., 326; *Smith vs. Moore*, 90 Ind., 204; *Cossmann vs. State ex rel.*, 106 Ind., 203.”

A question somewhat similar to that which you present was considered in a former opinion of this office, which appears in Vol. I, Opinions, Attorney General, 1917, at page 399, the syllabus of which reads as follows:

“The constitutional prohibition against holding the office of county treasurer by one person, for more than four years in a period of six years, renders a person ineligible to be elected to said office for a term, which will extend beyond such four-year limitation, and such person so elected for a term, before the conclusion of which he will have served in such office for a longer period than four years consecutively, is ineligible to hold said office, and there is, at the beginning of such term, a vacancy in the office, which should be filled according to law.”

The following language was used in the opinion:

"In a case in the Supreme Court of Kansas, *Demaree vs. Scates*, 20 L. R. A. 97, the word 'eligible' is very fully considered, and all definitions collated in the opinion. The following excerpt from the opinion gives the different terms in which the word is defined:

"The contention is over the meaning that should be given to the word 'eligible' in the statute. This word is determined by law and other standard lexicographers thus:

Black: "Capable of being chosen," "competency to hold office."

Bouvier and Anderson: "This term relates to the capacity of holding, as well as that of being elected to, an office."

Abbott: "The term 'eligible to office' relates to the capacity of holding, as well as the capacity of being elected."

19 Am. & Eng. Encyc. of Law 397: "Capable of being chosen," "implying competency to hold office, if chosen."

Worcester: "Legally qualified;" "capable of being legally chosen."

Webster: "That may be selected;" "legally qualified to be elected and to hold office."'

\* \* \* \* \*

The mere etymology of the word 'eligible,' indicating capable of selection, might be supposed to apply to the time of choosing by election or appointment. That, however, is contrary to the meaning defined by any of the authorities above cited, and is also an impossible meaning under this constitutional provision in which it is used—'eligible for more than four years.'

This case differentiates from any of those above cited. They all go upon the subject of the qualification of the candidate at the time of the election and of the officer at the beginning of the term. This is the case where a man has the qualification necessary for election to the office and assuming the office under the election, but possesses a disqualification that is bound to render him ineligible before the expiration of the term.

There can be no kind of doubt that he has no right to hold this office after the expiration of the four years, which was the question you asked. The question, however, of his right to this office is more far-reaching than your inquiry assumes. It is doubtful whether he was qualified to be elected to the office at all, and even more than doubtful, for it is scarcely doubtful on the other hand.

When a person is elected to an office he is elected for the lawful term of that office, and the question of his eligibility must be whether he is qualified to hold that office for the whole of that term, for the law could not contemplate an election to a part of a term. The law could not countenance the election of a man to enter into an office who should be compelled immediately to leave it in order that it might be filled by appointment, and yet there could be no difference whether this man's eligibility was to continue one day or one year and three hundred and sixty-four days. The principle is the same. When he procured himself to be voted for at this

election he knew he could not run for a full term, and that he could not lawfully serve out the term he was seeking. It was then known that before the beginning of this term he would have served more than two years, and that in order to serve out the term he would have been in office more than four years, which violates the law and the constitution. He was not a candidate for that office until June, but until the expiration of the term. He was not eligible for that office, not eligible to be elected to it. He, therefore, has not been the legal incumbent of the office but a mere intruder therein, a de facto officer only, and is entitled to serve only until the vacancy now existing in the office may be filled according to law."

I agree with this opinion.

In the question that you present the present incumbent in the sheriff's office, at the conclusion of the term of office which she is now serving, will have served three years and three months. The present incumbent possesses a disqualification that is bound to render her ineligible before the expiration of another term, viz., she may not serve more than four years, in any period of six years. As stated in the opinion above quoted:

"When a person is elected to an office he is elected for the lawful term of that office, and the question of his eligibility must be whether he is qualified to hold that office for the whole of that term, for the laws could not contemplate an election to a part of a term."

Answering your question specifically it is my opinion that:

1. By the provisions of Article X, Section 3, of the Constitution of Ohio, no person is eligible to the office of sheriff for more than four years in any period of six years.
2. When a person is elected to an office, he is elected for the lawful term of that office and the question of his eligibility must be whether or not he is qualified to hold that office for the whole of that term, the law not contemplating an election for a part of a term.
3. By the provisions of Article X, Section 3, of the Constitution of Ohio, a person who has served as sheriff for three years and three months in any period of six years, is ineligible to be a candidate for re-election to such office.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1995.

#### CIGARETTES—WHOLESALE BUSINESS—COST OF LICENSE.

##### SYLLABUS:

*A person, firm, company, corporation or co-partnership engaged in the wholesale business of trafficking in cigarettes, cigarette wrappers, or a substitute for either, shall annually be assessed and pay into the county treasury the sum of two hundred (\$200.00) dollars for each place where such business is carried on by or for such person, firm, company, corporation or co-partnership.*

COLUMBUS, OHIO, April 20, 1928.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for my opinion, which reads as follows: