

706.

VACANCY — CLERK MUNICIPAL COURT, SPRINGFIELD — TEMPORARILY FILLED BY APPOINTMENT BY JUDGE—SECTION 1579-746 G. C.—SUCCESSOR—ELECTED FOR UNEXPIRED TERM AT NEXT MUNICIPAL AND TOWNSHIP ELECTION, OCCURRING MORE THAN THIRTY DAYS AFTER SUCH VACANCY.

*SYLLABUS:*

*When a vacancy occurs in the office of Clerk of the Municipal Court of Springfield, and the vacancy is temporarily filled by appointment by the judge of said court, in pursuance of Section 1579-746, General Code, a successor to said appointee should be elected for the unexpired term at the next municipal and township election occurring more than thirty days after the said vacancy shall have occurred.*

COLUMBUS, OHIO, June 5, 1939.

HON. JEROME A. NEVIUS, *Prosecuting Attorney, Clark County, Springfield, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion with respect to the following matter:

“Harley C. Hosterman was elected Clerk of the Municipal Court of Springfield at the November election in 1937, for a term of four years, commencing on the first Monday of January, 1938. Shortly after taking office Mr. Hosterman died, and on May 9, 1938, the Judge of the Springfield Municipal Court appointed Rollie E. Black as Clerk.

The question will arise as to whether this office is to be filled at the November Election in this year (1939), and particularly as to whether the Board of Elections shall then accept petitions or prepare ballots for that office.”

The Municipal Court of Springfield, Ohio, was established by Act of the Legislature, in 1925, which Act was codified as Sections 1579-709 to 1579-760, inclusive, of the General Code of Ohio. By the terms of Section 1579-709, of the General Code, a court of record is established for the City of Springfield and Springfield Township, Clark County, Ohio, which court is styled the “Municipal Court of Springfield, Ohio.”

Section 1579-710, General Code, creates the office of Municipal Judge, who shall preside over the said Municipal Court of Springfield, Ohio. The term of office of said judge as fixed by this statute is to be four years.

Section 1579-713, General Code, provides as follows:

“Candidates for office of municipal judge shall be nominated by petition only, in the manner, as is now, or may hereafter be, provided by general laws for the nomination by petition of candidates for the office of common pleas judge, except that the number of signers of the petitions of each candidate for the office of municipal judge shall be not less in number than 3 per centum of the total number of votes cast for all the candidates for the office of governor of Ohio in the city of Springfield and Springfield township at the next preceding regular November election. The signers of said petitions shall be qualified electors of the city of Springfield or Springfield township. The form and contents of said petitions and all other proceedings in relation thereto shall be as is now, or may hereafter be, provided by general laws for the nomination by petition of candidates for the office of common pleas judge.

Said municipal judge shall be elected by the qualified electors of the city and township of Springfield in the manner as is now, or may hereafter be, provided by general laws for the election of common pleas judges.

The first election of said municipal judge shall be held at the time of the regular November election in the year 1925, and the term of office of such municipal judge shall commence on the first Monday of January next after his election, and he shall hold office until his successor is elected and qualified.”

Section 1579-743, General Code, creates the office of Clerk of the Municipal Court of Springfield, fixes his compensation and provides that the term of office of said clerk shall be four years. Said section also provides as follows:

“The nomination and election of said clerk shall be at the times and in the manner as is herein provided for the nomination and election of the municipal judge.

His term of office shall commence on the first Monday of January next after his election, and he shall hold office until his successor is duly elected and qualified.”

Section 1579-746, General Code, provides as follows:

“A vacancy in the office of the clerk of the municipal court shall be filled by the judge of said court, by appointment, until his successor is elected and qualified according to law.”

Pertinent provisions of Section 1579-754, General Code, read :

“Whenever there shall be a vacancy in the office of the judge of the municipal court created by this act, the same shall be filled by appointment by the governor until a successor is elected and qualified. Every such vacancy shall be filled by election at the first municipal and township election taking place more than thirty (30) days after the vacancy shall have occurred. The person elected shall fill the office for the unexpired term.”

While there is no express provision of the act creating the Municipal Court of Springfield which deals directly with the manner and time of election of a successor to a clerk of the court who has been appointed in pursuance of Section 1579-746 to fill the vacancy in the office of the clerk, it would seem that the provision with respect to the election to fill the vacancy in the office of judge of the court as contained in Section 1579-754, quoted above, would apply by reason of the provisions of Section 1579-743, supra, which provides that the nomination and election of the clerk shall be at the times and in the manner herein provided for nomination and election of the municipal judge.

This construction of the act is in accord with the general provision of law with respect to the filling of vacancies in elective offices, as contained in Section 10 of the General Code of Ohio, which 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.”

At least, it is a safe conclusion to construe the terms of the municipal court act to accord with the general law as contained in Section 10, of the General Code, because if the construction hereinbefore placed on the act with respect to an election to fill the vacancy in the office of clerk of the municipal court is not tenable, the act makes no provision with respect thereto, and the terms of Section 10 would prevail because it could then safely be said that the election to fill such a vacancy is not “otherwise provided by law” and the terms of Section 10 would for that reason apply.

In the situation as outlined by you, Mr. Hosterman, who was elected

in the November election of 1937, for a term of four years, would have served if he had lived, until the first Monday of January, 1942. Having died after qualifying for and assuming the office, the vacancy was filled by appointment, in pursuance of Section 1579-746, and the appointee is by the terms of that statute to serve until his successor is elected and qualified according to law. The next general election for the office occurring more than thirty days after the vacancy occurred would be the general election for that office to be held in November, 1939, and it is my opinion that the vacancy should be filled by election at that time and the person so elected will serve for the unexpired term of Mr. Hosterman, to wit, until the first Monday in January, 1942.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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707.

BOARD OF EDUCATION—LOCAL DISTRICT—WITHIN DISCRETION TO MAINTAIN SPECIAL CLASSES FOR UNDERNOURISHED CHILDREN—STATUS, CHILDREN AFFLICTED WITH TUBERCULOSIS—NO POWER GRANTED BY LAW TO FURNISH FOOD FREE OF CHARGE TO UNDERNOURISHED CHILDREN—NO PROVISION TO EXPEND PUBLIC SCHOOL FUNDS FOR CLOTHING, SLEEPING GARMENTS, COOKING MEALS, LAUNDERING CLOTHES FOR PUPILS IN SPECIAL SCHOOLS—SECTION 7644-1 G. C.

*SYLLABUS:*

1. *A local district board of education may, in its discretion, establish and maintain special classes for undernourished children within the schools under its jurisdiction.*

2. *A board of education in a city school district may establish and maintain special elementary schools for resident school pupils of compulsory school age who are afflicted with tuberculosis, and furnish transportation for such pupils to the schools so established. Where such schools are established and maintained resident elementary school children afflicted with tuberculosis may be excluded from the other schools of the district.*

3. *Power is not extended by law to boards of education to expend public school funds under their control for food to be furnished free of charge to undernourished children in attendance in the schools of their districts or to expend such funds for the furnishing of food or clothing such as sleeping garments and the like, or for cooking meals or launder-*