

1955.

APPROVAL, BONDS OF PUTNAM COUNTY—\$5,392.70.

COLUMBUS, OHIO, June 6, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1956.

VACANCY—OFFICES OF COUNTY AUDITOR AND COMMISSIONER—
WHEN SUCCESSORS TO APPOINTEES ELECTED.

SYLLABUS:

1. *When a county auditor, who was elected in November, 1926, and entered upon the duties of his office on the second Monday of March, 1927, resigned on April 14, 1930, a successor should be elected at the general election in November, 1930. Said successor should take office as soon as he can qualify after such election and serve until March 9, 1931.*

2. *If a county commissioner, who was elected at the general November election in 1928, and assumed office on January 7, 1929, should resign at the present time, a successor should be elected at the general November election in 1930, and would serve from the date of qualification after such election for the unexpired term, i. e., until the first Monday in January, 1933.*

COLUMBUS, OHIO, June 6, 1930.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

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

“Some time ago one of your predecessors ruled that there was *no* election for a short term in the office of County Auditor. If I am not mistaken the ruling was made by Attorney General Price about 1924. As I view the situation as it exists in this county, there *should* be an election for a short term. The facts here are as follows: Harry Gaskill, County Auditor, resigned on April 14, 1930, and a deputy in his office, Alfred Osborn, was appointed to fill his place. The term runs until sometime in March, 1931. There is a general election in November of this year and it seems to me that there should be an election for this short term from November to March.

An immediate ruling is asked on the above question in order that those persons desiring to file primary petitions for short terms may do so, if you hold that there should be an election for this short term.

If a County Commissioner, whose term would expire in January, 1933, should resign at the present time, it is my understanding that there would have to be an election for the term running from November, 1930, to January, 1933, in the November election. Is this correct?

I would appreciate replies to the two questions above this week in order that whatever steps are necessary may be taken before the last filing date which is Friday, June 13.”

Provisions of the Constitution of Ohio relevant to your first question are contained in Article XVII, Section 2. The last sentence of said section reads as follows:

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

(Matter in parentheses the writer's.)

The manner of filling a vacancy in the office of county auditor, prescribed by law, is that set forth in Sections 10 and 2562, of the General Code, which provide as follows:

Sec. 10. “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.”

Sec. 2562. “If a vacancy occurs in the office of the county auditor, from any cause, the commissioners of the county shall appoint a suitable person, resident of the county, to fill the vacancy.”

It will be noted from the provisions of Section 2562, supra, that when a vacancy occurs in the office of county auditor it shall be filled by appointment thereto of a suitable person, such appointment to be made by the county commissioners. The said statute makes no provision with respect to the length of time such appointee shall serve, nor does any other statute or provision of law specifically applying to appointments made to fill vacancies in the office of county auditor, so provide. The tenure of office of such appointee is thus controlled by Section 10, supra, which provides that such appointee shall serve until his successor is elected and qualified. His successor, however, shall be elected for the unexpired term of the person whose resignation created the vacancy, at the first general election for county auditor which occurs more than thirty days after the vacancy shall have occurred.

Section 2558, General Code, provides as follows:

“A county auditor shall be chosen quadrennially in each county, who shall hold his office for four years, commencing on the second Monday in March next after his election.”

Section 1 of Article XVII, of the Constitution of Ohio, provides that “Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years”. Also Section 4785-4, General Code, states so far as pertinent as follows:

“General elections in the State of Ohio and its political subdivisions shall be held as follows:

* * *

c. For the election of * * * elective * * * county officers, in the even numbered years; except as herein otherwise provided for filling vacancies. * * *

It appears from the records in the office of the Secretary of State that the county auditor, Mr. Gaskill, who resigned, was elected in November, 1926, and assumed office on the second Monday of March, 1927, and that his term of office would have expired on March 9, 1931, had he not resigned. Since Section 2558, General Code, supra, provides for an election for a county auditor quadrennially, it is evident that there will be a regular election for county auditor this year. As I have previously stated, Section 10, General Code, provides that the election of a successor shall be held at the first general election for the office which is vacant occurring more than thirty days after the vacancy. You state in your communication that the county auditor resigned on April 14, 1930. Therefore, it is apparent that the November election 1930, will be the first general election for the office which is vacant occurring more than thirty days after the vacancy. The person elected to fill the vacancy will, of course, assume office as soon as he can qualify after the election, and will serve until March 9, 1931, since Section 10, General Code, specifically provides that the election of a successor shall be for the unexpired term.

In your communication you state that one of my predecessors ruled that there is no election for a short term in the office of county auditor and cite the ruling as occurring about 1924. I presume you have in mind an opinion to be found on page 345 of the volume for that year. The syllabus of said opinion held:

"Under Section 2558 G. C. the term of office of a county auditor was made a four year term, commencing on the second Monday in March next after the election of said county auditor, and continuing thereafter for four years. A vacancy occurring in said office being duly filled by appointment, the said appointee is entitled to continue to hold said office until the successor elected at the next regular quadrennial election for said office duly qualifies for the unexpired term."

An examination of the opinion discloses that the facts in said opinion were somewhat different from those involved in the present instance. Nevertheless, the syllabus discloses that there should be an election for a short term.

Specifically answering your first question, I am of the view that when a county auditor who was elected in November, 1926, took office on the second Monday in March, 1927, and resigned on April 14, 1930, a successor should be elected at the November, 1930, election, who will take office as soon as he can qualify after the election, and serve until March 9, 1931.

I shall now consider your second question. Sections 2396 and 2397, General Code, read as follows:

Sec. 2396. "When a commissioner is elected to fill a vacancy occasioned by death, resignation, or removal, he shall hold his office for the unexpired time for which his predecessor was elected."

Sec. 2397. "If a vacancy in the office of commissioner occurs more than thirty days before the next election for state and county officers, a successor shall be elected thereat. If a vacancy occurs more than thirty days before such election, or within that time, and the interest of the county requires that the vacancy be filled before the election, the probate judge, auditor, and recorder of the county, or a majority of them, shall appoint a commissioner, who shall hold his office until his successor is elected and qualified."

It may be noted that under Section 2396, supra, a vacancy is occasioned by resignation. Furthermore, Section 2397, supra, specifically states that if a vacancy occurs in the office of county commissioner more than thirty days before the next election for state and county officers, a successor shall be elected thereat. In a preceding

paragraph I have indicated that elections for county officers are held under constitutional and statutory provisions in the even numbered years. Since your question involves a possible resignation at the present time, it is apparent that the November election in 1930 would be the next election for state and county officers occurring more than thirty days after the vacancy in the office of county commissioner. Moreover, by express provision of Section 2396, the successor would serve for the unexpired term.

This office has several times reached the above conclusion. Sections 2396 and 2397, General Code, supra, were enacted April 2, 1906 (98 O. L. 272) and have not since been changed in any way. In Annual Report of the Attorney General for 1912, Vol. II, page 1442, the first paragraph of the syllabus held:

“Under Section 2397 of the General Code, when a vacancy occurs in the office of county commissioner, more than thirty days prior to the next election for state and county officers, the successor must be elected at the said election. Said successor shall serve, under Section 2396 of the General Code, for the unexpired term of his predecessor.”

In another opinion, to be found in Opinions of the Attorney General for 1927, Vol. I, page 53, my predecessor ruled, as disclosed by the syllabus:

“Under the provisions of Sections 2396 and 2397 of the General Code, where a vacancy occurs in the office of the county commissioner, who was elected in November, 1926, and said vacancy is filled by appointment, the appointee will hold his office as county commissioner until his successor is elected and qualified at the November election of 1928, and the person so elected at that time will hold his office for the unexpired term for which his predecessor was elected.”

The most recent ruling is reported in Opinions of the Attorney General for 1927, Vol. III, page 1651. The first paragraph of the syllabus reads:

“Under Section 2397, General Code, when a vacancy occurs in the office of county commissioner more than thirty days before the next election for state and county officers, a successor must be elected at said election to serve for the unexpired term of the commissioner who was elected to the office.”

Without further discussion, I am of the opinion that if a county commissioner who was elected at the general November election in 1928 and assumed office on January 7, 1929, should resign at the present time, a successor should be elected at the general November election in 1930, and would serve from the date of qualification after such election for the unexpired term, i. e. until the first Monday in January, 1933.

Respectfully,

GILBERT BETTMAN,
Attorney General.