

2200.

APPROVAL—BONDS, ROSS COUNTY, \$67,000.00, DATED JANUARY 1, 1938.

COLUMBUS, OHIO, March 31, 1938.

*The Industrial Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:

RE: Bonds of Ross County,  
Ohio, \$67,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of bridge bonds dated January 1, 1938, bearing interest at the rate of  $2\frac{1}{2}\%$  per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said county.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

2201.

VACANCY—OFFICE COUNTY TREASURER—PERSON APPOINTED TO FILL SAME—HOLDS OFFICE UNTIL SUCCESSOR ELECTED AND QUALIFIED—VACANCY—OFFICE OF SHERIFF—APPOINTEE HOLDS FOR UNEXPIRED TERM OF PREDECESSOR AND UNTIL SUCCESSOR ELECTED AND QUALIFIED.

*SYLLABUS:*

1. *The person appointed to fill a vacancy in the office of county treasurer which occurred June 4, 1937, holds such office until his successor is elected and qualified, and such successor shall be elected at the general election to be held in November, 1938.*

2. *A person appointed to fill a vacancy in the office of sheriff holds such office for the unexpired term of his predecessor and until his successor is elected and qualified.*

COLUMBUS, OHIO, April 1, 1938.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR: This acknowledges receipt of your letter of recent date which reads as follows:

"I respectfully request your opinion upon the following:

A. At the November election, 1936, R. H. H., the then Treasurer of Warren County, Ohio, serving by appointment, was elected Treasurer of said county for a term of four years, which said term would commence on the first Monday of September, 1937.

However, Mr. H. resigned as Treasurer on June 4, 1937, before qualifying for his regular term.

Upon receipt of his resignation and upon the same date, to-wit: June 4, 1937, the present incumbent was appointed as Treasurer of said County 'to fill the vacancy caused by the resignation of R. H. H., he to hold said Office until his successor is elected and qualified.'

B. W. E. G., the duly elected, qualified and acting Sheriff of Warren County, Ohio, died on January 22, 1938. On January 24, 1938, the present incumbent was appointed 'to fill the vacancy caused by the death of W. E. G., as aforesaid, his said appointment to commence as of this date, to-wit: January 24, 1938, and he to hold said Office under said appointment until his successor is elected and qualified'.

The question is whether or not it will be necessary to elect a Treasurer and Sheriff of Warren County, Ohio, this year."

Section 2636, General Code, providing the manner in which a vacancy in the office of county treasurer shall be filled, reads as follows:

"When the office of county treasurer becomes vacant by death, removal, resignation, neglect to give bond or other cause, the commissioners shall forthwith appoint a suitable person to fill such vacancy. The person so appointed shall give bond and take an oath as required by law."

It is to be noted that the provisions of the foregoing section do not state the tenure of office of a person appointed to fill a vacancy in the

office of county treasurer. Consequently, the general laws relating to the above subject matter must be considered.

Section 10, General Code, as amended in 117 O. L., House Bill 169, which provides the tenure of appointees to elective offices, reads 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. When an elected candidate has failed to qualify for the office to which he has been elected, the office shall be filled as in the case of a vacancy. Until so filled, the incumbent officer shall continue to hold the office. This section shall not be construed to postpone the time for such election beyond that at which it would have been held and 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.”

It is to be noted that under the provisions of the foregoing section an appointee holds office until his successor is elected and qualified and such successor, unless otherwise provided by law, “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 to be noted that the foregoing language found in Section 10, *supra*, is in the same form as it was prior to the amendment.

The Supreme Court of Ohio in the case of *State, ex rel. Harsha vs. Troxel*, 125 O. S. 235, in considering the above quoted language, held as disclosed by the syllabus:

“The successor of an appointee appointed to fill a vacancy in the office of county auditor, which vacancy occurred more than thirty days before the next general election at which county officers can be voted for, must be elected at the next general election for county officers.”

In Opinions of the Attorney General for 1930, Vol. I, Page 772, it was held that where a vacancy occurred in the office of county treasurer on September 2, 1929, and a person has been appointed by the county commissioners to fill said vacancy, a successor should be elected at the general election on November 4, 1930, to fill out the unexpired term.

To the same effect is the opinion found in the same volume, page 781, where it was held as disclosed by the syllabus as follows:

"1. The tenure of an appointee to a vacancy in the office of county treasurer, is not for the unexpired term but only until the successor is elected and qualified.

2. A successor to such appointee should be elected at the first November election for the office which is vacant occurring more than thirty days after the occurrence of the vacancy."

My immediate predecessor in office, in 1936 in Opinion No. 6442, in considering the provisions of Section 2755, General Code, relating to the filling of a vacancy occurring in the office of recorder, which section is similar to Section 2636, *supra*, in that the tenure of the appointee is not fixed, held as set forth in the syllabus:

"Where an incumbent of the office of county recorder dies shortly after the general November election of 1936, at which he was re-elected county recorder, under the provisions of Section 2750, General Code, as amended by House Bill 603 of the first special session of the 91st General Assembly, for a term of four years, beginning on the first Monday of January, 1937, and the county commissioners, acting under authority of Section 2755, General Code, appoint a suitable person to fill the vacancy in such office, such person holds the office until a successor, who shall be elected at the general November election of 1938, has qualified after such election for the remainder of the unexpired portion of the four year term to which such deceased recorder had been elected."

In view of the above authorities, it is my opinion that the person appointed to fill a vacancy in the office of county treasurer which occurred June 4, 1937, holds such office until his successor is elected and qualified, and such successor shall be elected at the general election to be held in November, 1938.

Your second question requires a consideration of Section 2828, General Code, relating to the filling of a vacancy in the office of sheriff. This section, in part, reads as follows:

"When the office of sheriff becomes vacant, the county commissioners shall appoint a suitable person to fill the vacancy. The person so appointed shall give bond, take the oath of office prescribed for the sheriff, and hold the office during the unexpired term. \* \* \*"

It is to be noted that the provision of the foregoing section, unlike the provisions of the section above considered, states definitely the tenure of an appointee in the office of sheriff. Such appointee holds the office during "the unexpired term".

The Court in *State vs. Pask*, 126 O. S. 633, speaking through Allen, J., said at page 641:

"We hold that when a vacancy is created in the term of sheriff, by his resignation during such term, one duly appointed and qualified to fill the vacancy thus created will hold the office for and during the unexpired term of his predecessor and until his successor is elected and qualified."

Section 2823, General Code, was amended in 116 O. L., Part 2, page 184, and reads as follows:

"There shall be elected quadrennially in each county a sheriff and a coroner, each of whom shall hold his office for a term of four years, beginning on the first Monday of January next after his election."

Pursuant to the above provisions, the person elected to the office of sheriff at the November, 1936, election was elected for a term of four years beginning on the first Monday of January next after his election.

In view of the court's holding in the Pask case, it is my opinion that the person appointed to fill the vacancy in the office of sheriff holds such office for the unexpired term of his predecessor and until his successor is elected and qualified. Thus, it will not be necessary to elect a sheriff at the general November 1938, election.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*