

on the first day of January, next after his election, and *shall serve until his successor is elected and qualified.* * * * * " (Italics the writer's)

Of course, it is possible that the old mayor has abandoned the office, but I am assuming for the purposes of this opinion that such is not the case; hence it is believed that the old mayor is the proper person to fill the four vacancies after the expiration of the thirty day period.

The opinion referred to in your communication is undoubtedly my Opinion No. 1337, rendered on December 27, 1929, to the prosecuting attorney of Hardin County. Said opinion held as disclosed by the syllabus as follows:

"1. Where an entire new village council of six members is elected and four of such councilmen-elect are unable to qualify because of having served as election judges in violation of Section 5092, General Code, none of the outgoing members of council hold over because of such situation.

2. The two duly elected members of council not constituting a majority have no power to fill the four vacancies, but after expiration of the thirty day period provided in Section 4236, General Code, the vacancies will be filled by appointment of the mayor."

While the facts in that opinion were somewhat different from those in the situation now before me, nevertheless the law, as contained in the second paragraph of the syllabus, supra, is clearly applicable to your inquiry. I am enclosing a copy of said opinion.

In view of the foregoing, I am of the opinion that:

1. Two newly elected members of a village council, not constituting a majority, have no power to fill four vacancies in such council, caused by the failure of four old members to hold over.

2. Such vacancies should be filled by appointments of the village mayor after the expiration of the thirty day period, as provided in Section 4236, General Code.

3. Since the newly elected mayor has not qualified, the old mayor holds over by the express terms of Section 4255, General Code, and is the proper person to fill said vacancies in the village council.

Respectfully,
GILBERT BETTMAN,
Attorney General.

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APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
JEFFERSON COUNTY.

COLUMBUS, OHIO, January 29, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*