

Note from the Attorney General's Office:

1968 Op. Att'y Gen. No. 68-072 was overruled in part by
1990 Op. Att'y Gen. No. 90-070.

OPINION NO. 68-072**Syllabus:**

1. The determination of who shall appoint a person to hold the office of prosecuting attorney pursuant to Section 305.02, Revised Code, is contingent upon whether or not the last occupant of the office was elected as an independent.

2. The only residency requirement for one who is to be appointed to the office of county prosecuting attorney is that he be a resident of the State of Ohio for one year.

To: Homer B. Gall, Jr., Athens County Pros. Atty., Athens, Ohio
By: William B. Saxbe, Attorney General, April 17, 1968

Your opinion request raises two questions:

- (1) If there are no candidates for the office of county prosecuting attorney, who will appoint a prosecuting attorney?
- (2) Must the appointee meet a residency requirement?

The answer to the first question is contained in the following paragraphs of Section 305.02, Revised Code:

"(A) If a vacancy in the office of county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common

pleas, sheriff, county recorder, county engineer, or coroner occurs more than forty days before the next general election for state and county officers, a successor shall be elected at such election for the unexpired term unless such term expires within one year immediately following the date of such general election.

"In either event, the vacancy shall be filled as provided in this section and the appointee shall hold his office until a successor is elected and qualified.

"(B) If a vacancy occurs from any cause in any of the offices named in division (A) of this section, the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, * * *

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"(D) If the last occupant of the office or the officer-elect was elected as an independent candidate, the board of county commissioners shall make such appointment at the time when the vacancy occurs, * * *

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(Emphasis added)

Section 309.01, Revised Code, provides that a prosecuting attorney shall hold his office for four years. However, when a vacancy is filled pursuant to Sections 305.02 (B) or (D), Revised Code, Section 305.02 (A), Revised Code, requires that a successor to the appointee be elected at the next general election for state and county officers. Therefore, if a candidate is available at the next general election, even though the appointee has held the office of prosecuting attorney for less than four years, an election for that office must be held.

Therefore, it is my opinion that if the present prosecuting attorney is affiliated with a political party, the county central committee of that party shall appoint his successor. If the present prosecutor was elected as an independent candidate, the county commissioners shall make the appointment. Regardless of who makes the appointment, a successor must be elected at the following general election, if a candidate is available.

Turning to your second question, Section 4, Article XV, Ohio Constitution, provides:

"No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector."
(As amended Nov. 3, 1953; 125 v 1095.)

The qualifications of an elector are set out in Section 1,

Article V, Ohio Constitution, and Section 3503.01, Revised Code. Section 1, Article V, Ohio Constitution, provides in part:

"Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of the state one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections."

Section 3503.01, supra, provides in part:

"Every citizen of the United States who is of the age of twenty-one years or over and who has been a resident of the state one year, of the county forty days, and of the voting precinct forty days next preceding the election at which he offers to vote has the qualifications of an elector and may vote at all elections, * * *"

Application of Section 3503.01, supra, raises the question whether a prospective appointee must qualify as an elector not only on a state-wide basis, but also in the county in which he will hold office.

This question was squarely before the Ohio Supreme Court in Jeffers v. Sowers, 171 Ohio St. 295 (1960). The issue there was whether a resident and elector of Athens County could be appointed to the office of county engineer of Vinton County. The court held that the term "elector", when used as a qualification for political office, means state elector, not county elector. An individual is classified as a county elector to determine where he must cast his vote, not to determine where he can hold political office. In order to be a state elector, one must be a resident of the state for one year.

Therefore, it is my opinion that the only residency requirement for one who is to be appointed to the office of county prosecuting attorney is that he be a resident of the State of Ohio for one year.