

**OPINION NO. 69-052****Syllabus:**

1. When a re-elected County Treasurer dies more than fifteen days before the end of his term of office, the vacancy shall be filled pursuant to Subsection (A) of Section 305.02, Revised Code.

2. For the reason that there is no provision made in the law to permit an appointment to be made for the purpose of filling vacancies in the office of County Treasurer spanning more than part of one term, the county central committee shall appoint someone to fill such second vacancy if it occurs because of death before the term began, pursuant to Subsections (A) and (B) of Section 305.02, Revised Code.

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**To: David A. Cutright, Ross County Pros. Atty., Chillicothe, Ohio**  
**By: Paul W. Brown, Attorney General, May 28, 1969**

You have directed two questions to me for my opinion. They are as follows:

"First, where a county treasurer is elected in November, 1968, and dies in April, 1969, prior to the commencement of this term on September 1, 1969, under the provisions of subsection (B) of Section 305.02, Ohio Revised Code, does the county central committee make two appointments in such case, one for the period ending August 31, 1969 (the unexpired term) and one for the period commencing September 1, 1969 (the beginning of the new term)?

"Second, if a new county treasurer is elected for the unexpired term in the general elections to be held in November, 1970, when would his term commence? Would it commence on the first Monday of September, 1971, under the provisions of Section 321.01, Ohio Revised Code?"

Section 27, Article II, Constitution, provides as follows:

"The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this Constitution, or the Constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the General Assembly, except as prescribed in this Constitution; and in these cases, the vote shall be taken 'viva voce.'"

There appear to be no constitutional specifications for the filling of vacancies in the office of County Treasurer other than Section 1, Article X, Constitution, which reads as follows:

"The General Assembly shall provide by general law for the organization and government of counties and may provide by general law alternative forms of county government.\* \* \*"

Pursuant thereto, the General Assembly has provided the only answer to your questions and it is complete in Section 305.02, Revised Code. This being a very difficult factual situation to apply the law, which has in this case been made and provided, we must, at the outset, emphasize the fact that you have a vacancy presently existing in the office of County Treasurer for an unexpired term which ends August 31, 1969. Dealing with the term of an appointee to the office of County Treasurer, the Constitution provides in Section 2, Article XVII:

"\* \* \*All vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by law."  
(Emphasis added.)

On the day following, there will be another vacancy occurring.

In the first instance you are required to invoke Subsection (A) of Section 305.02, Revised Code, which reads as follows:

"(A) If a vacancy in the office of county commissioners, 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." (Emphasis added.)

Having accomplished this act, the office has an incumbent until the expiration of the term as is required above. (Section 2, Article XVII, supra.)

On the first of September, 1969, another vacancy occurs for which is provided Subsection (B) of Section 305.02, Revised Code, which reads in pertinent part as follows:

"\* \* \*except that if such vacancy occurs because of the death, resignation, or inability to take office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated." (Emphasis added.)

This last quotation makes no mention of the time to be served by the appointee, but Subsection (A) is in pari materia with Subsection (B) and must be considered applicable.

It is, therefore, my opinion, in answer to your questions, that:

1. When a re-elected County Treasurer dies more than fifteen days before the end of his term of office, the vacancy shall be filled pursuant to Subsection (A) of Section 305.02, Revised Code.

2. For the reason that there is no provision made in the law to permit an appointment to be made for the purpose of filling vacancies in the office of County Treasurer spanning more than part of one term, the county central committee shall appoint someone to fill such second vacancy if it occurs because of death before the term began, pursuant to Subsections (A) and (B) of Section 305.02, Revised Code.