

1870

1. VACANCY — COUNTY ENGINEER — APPOINTMENT TO FILL VACANCY MADE BY COUNTY COMMISSIONERS— APPOINTMENT VALID—PERIOD OF APPOINTMENT EXPIRES ON DATE OF FOLLOWING GENERAL ELECTION WHICH OCCURS MORE THAN THIRTY DAYS AFTER VACANCY TAKES PLACE.
2. WHERE COUNTY ENGINEER APPOINTED TO FILL VACANCY—NO REQUIREMENT IN LAW APPOINTEE SHALL BE RESIDENT ELECTOR OF COUNTY WHERE APPOINTMENT MADE.

SYLLABUS:

1. Where a vacancy occurs in the office of county engineer and an appointment is made by the county commissioners to fill such vacancy, such appointment is valid and the period of appointment expires on the date of the following general election which occurs more than thirty days after the vacancy takes place.

2. Where the county commissioners make an appointment to fill a vacancy in the office of county engineer, there is no requirement in law that such appointee shall be a resident elector of the county in which such appointment is made.

Columbus, Ohio, June 9, 1950

Hon. W. C. Pyers, Prosecuting Attorney  
Holmes County, Millersburg, Ohio

Dear Sir :

Your request for my opinion is as follows :

“Due to the fact that our County Engineer for Holmes County has resigned effective as of March 1, 1950, which makes our time very short, I am in urgent need of an opinion on the following questions :

(1) Under General Code Section 2785, is the appointment made until the next general election, which would be November, 1950, or is he appointed for the balance of the term?

(2) Are the Commissioners bound to appoint as County Engineer an engineer who is a resident of the county, or can they appoint one from some other county?

The reason for this question is that in Holmes County there are only three persons eligible to serve as County Engineer, none of whom are interested in the position.”

In my opinion the answer to your first question is contained in the case of State, ex rel. Shriver v. Hayes, 148 O. S. 681; 76 N. E. (2d) 869. The third paragraph of the syllabus reads as follows :

“When the office of county engineer becomes vacant more than thirty days before a regular state election, a county engineer shall be elected for the unexpired term at such succeeding regular election, and the names of candidates for such term may be written in with a clear designation of the office and the required ‘X’ on the official ballot, and the person receiving the highest number of votes will be declared elected to such office, notwithstanding the name of such office is not printed on the ballot.”

Section 10 of the General Code provides in part 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.  
\* \* \*”

From an analysis of the above, it seems clear that where an appoint-

ment is made to fill a vacancy in the office of county engineer, such appointment is for the period ending with the first general election which occurs more than thirty days after the vacancy occurs, which in the case under consideration will be the November election in 1950.

For the present I will proceed to a consideration of your second question which is:

“Are the Commissioners bound to appoint as County Engineer an engineer who is a resident elector of the county, or can they appoint one from some other county?”

In considering this question, there should always be borne in mind the distinction between an election of such officer and the appointment of such officer. Since the election laws are clear as to the procedure and qualifications with respect to a candidate for office, and since that question is not before me, it needs no attention here, and I will direct my discussion to the question as stated.

For clarification, county surveyor and county engineer are synonymous terms. (See Section 2781-I, General Code.) In other language your question may be stated as follows:

Can the county commissioners in case of a vacancy in the office of county surveyor or county engineer fill the vacancy by appointment of a person who resides and is an elector of a county of the state other than the county wherein he is appointed?

I call your attention to Section 2785, General Code, which reads in part as follows:

“If a vacancy occurs in the office of county surveyor because of death, resignation or otherwise, the county commissioners shall appoint a *suitable* person county surveyor \* \* \*.”

(Emphasis added.)

Your attention is directed to the word “suitable”, and we must look to the statutes for any specific requirements for one to qualify as an appointee to such office, and in this connection I also direct your attention to Section 2783, General Code, which reads in part as follows:

“\* \* \* In all counties no person shall be eligible as a candidate for the office of county engineer or be elected or appointed thereto except a registered professional engineer and registered surveyor

licensed to practice in the state of Ohio, or a person who shall have previously served as county engineer immediately prior to his election."

It will be noted from a reading of the above that even here there is a distinction between appointed engineers and elected engineers. The elected engineer if he has served as a county engineer immediately prior to his election need not be a registered engineer and registered surveyor licensed to practice in the state of Ohio. But in all other cases of election or appointment such requirement holds.

For the purpose of history and further clarification, the Constitution of the State of Ohio, Article XV, Section 4, reads in part:

"No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector;  
\* \* \*"

The Constitution, of course, is the law of the State. Its application is state-wide and when it refers to the qualifications of an elector it obviously means an elector of the State, and we can not bring it down to mean that wherever an appointment is made to fill a vacancy in a county office it means that such appointee shall be an elector of such county, in the absence of a specific requirement that he be such an elector.

Under the election laws, Section 4785-3 (h), General Code, reads as follows:

"The term 'elector' or 'qualified elector' shall mean a person having the qualifications provided by law to entitle him to vote."

Here I wish to point out again that we have a definition of an elector of the State of Ohio which of course when applied to a political subdivision does not change its meaning but does imply that for the purpose of voting his elector-ship must be localized to the place where he qualifies for the purpose of exercising his privilege to vote and has nothing whatever to do with his qualifications for appointment to a vacancy such as we are considering.

Section 4785-29, General Code, reads as follows:

"Every citizen of the United States who is of the age of twenty-one years or over who possesses the qualifications herein required shall be entitled to vote at all elections."

Section 4785-30, General Code, gives the qualifications entitling one to vote, and reads in part as follows :

“No person shall be permitted to vote at any election unless he shall have 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 \* \* \*.”

The above sections clearly refer to the qualifications of a person which entitles him to vote, but there is no question in this case before us as to the appointee being a candidate or as to his right to vote. It is clearly stated in your communication that the person proposed to be appointed is not an elector of the county where he is to be appointed. It is not specifically stated that the person proposed to be appointed is an elector of the State of Ohio, but I presume that he is. Therefore, it appears clear to me that he qualifies within the purview of the constitutional requirement heretofore set forth, and also within the purview of Section 2783, General Code, inasmuch as I must also presume that he is a registered professional engineer and registered surveyor licensed to practice in the State of Ohio.

I find no requirement in the Constitution or any statutes of this state where an engineer to qualify as an appointee to fill a vacancy in the office of county engineer is required to be a resident elector of such county in which the vacancy is to be filled.

Therefore, in specific answer to your question No. (1) it is my opinion that where a vacancy occurs in the office of county engineer and an appointment is made by the county commissioners to fill such vacancy, such appointment is valid and that the period of appointment expires on the date of the following general election which occurs more than thirty days after the vacancy takes place ; and, in specific answer to your question No. (2) it is my opinion that where the county commissioners make an appointment to fill a vacancy in the office of county engineer, there is no requirement in law that such appointee shall be a resident elector of the county in which such appointment is made.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.