

1887.

VACANCY—COUNTY TREASURER—TENURE OF OFFICE OF APPOINTEE  
—WHEN SUCCESSOR TO BE ELECTED.

## SYLLABUS:

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 general November election for the office which is vacant occurring more than thirty days after the occurrence of the vacancy.*

COLUMBUS, OHIO, May 20, 1930.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“At the regular election in November 1928, T. D. B. was elected Treasurer of Pickaway County, Ohio, for a term of two years, beginning with the first Monday of September 1929, and ending on the first Monday of September 1931. He later qualified and entered upon the discharge of the duties of his office, as provided by law. On the 10th day of May, 1930, said Treasurer died, leaving a vacancy in his office. For how long a term will his successor, properly appointed pursuant to G. C. 2636, hold? Will it be necessary to elect a Treasurer at the regular election in November, 1930, to fill the unexpired term of T. D. B. or will the appointment made by the County Commissioners pursuant to G. C. 2636 be for the balance of the unexpired term of the said deceased Treasurer?”

Provisions of the Constitution of Ohio pertinent to your inquiry are contained in Article II, Section 27, and Article XVII, Section 2, which read in part as follows:

ART. II, Sec. 27. “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; \* \* \*”

ART. XVII, Sec. 2. “Any vacancy which shall occur in any elective state office other than that of a member of the General Assembly or of Governor, shall be filled by appointment by the Governor until the disability is removed or a successor elected and qualified. Every such vacancy shall be filled by election at the first general election for the office which is vacant, that occurs more than thirty (30) days after the vacancy shall have occurred. The person elected shall fill the office for the unexpired term. *All vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by law.*” (Italics the writer’s.)

Inasmuch as the office of county treasurer is an elective office and the filling of a vacancy therein is not specifically provided for in the Constitution of Ohio or the Constitution of the United States, the filling thereof is controlled by Section 2 of Article XVII of the Constitution of Ohio, which provides that such vacancy shall be filled “for the unexpired term in such manner as may be prescribed by law.”

The manner of filling such vacancy prescribed by law is that set forth in Sections 10 and 2636 of the General Code, which read as follows:

Sec. 10. "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. This section shall not be construed to postpone the time for such election beyond that at which it would have been held had 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."

Sec. 2636. "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 will be observed from the terms of Section 2636, supra, that when a vacancy occurs in the office of county treasurer it shall be filled forthwith by appointment thereof of a suitable person, such appointment to be made by the county commissioners. The statute makes no provision with reference to the length of time such appointee shall serve, nor does any other statute or provision of law specifically applying to appointments made to fill vacancies in the office of county treasurer so provide. The tenure of such appointee is therefore controlled by Section 10, supra, which provides that such appointee shall serve until his successor is elected and qualified. His successor, however, shall be elected for the unexpired term of the person whose death, removal, resignation, failure to give bond or for other cause created the vacancy, at the first general election for county treasurer which occurs more than thirty days after the vacancy shall have occurred.

By the terms of Section 2632, General Code, it is provided that a county treasurer shall be elected biennially in each county, and that he shall hold his office for two years from the first Monday of September after his election.

Section 1 of Article XVII of the Constitution of Ohio provides that the election for county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years.

From your inquiry it appears that the Treasurer of Pickaway County who had been elected for a term of two years in November, 1928, died on the tenth day of May, 1930, thereby creating a vacancy in the office of county treasurer for said county. It therefore became the duty of the county commissioners to make an appointment of a suitable person to fill the vacancy thereby created, said appointee to hold said office until his successor should be elected in the manner provided by law.

In accordance with the terms of Section 10, supra, the successor to said appointee should be elected for the unexpired term of the person who died, at the next general election for said office which occurs more than thirty days after the vacancy occurred. The next general election for said office would be the first Tuesday after the first Monday in November, 1930, which is more than thirty days after May 10, 1930, the time when the vacancy occurred. The term of office of the treasurer who died on May 10, 1930, extends to the first Monday of September, 1931. The person so elected at the November, 1930, election to fill the unexpired term of the person who died would therefore serve until the first Monday of September, 1931.

Inasmuch as the November election in 1930 is the regular time for the election of a treasurer for Pickaway County, it will be necessary, at the coming election, to elect a person to fill the unexpired term of the treasurer who died and also a treasurer for the next succeeding entire term beginning with the first Monday of September next after said election.

I am, therefore, of the opinion in specific answer to your question that the vacancy

which occurred in the office of county treasurer of Pickaway County on May 10, 1930, should have been filled forthwith by the county commissioners by the appointment of a suitable person to fill said vacancy. The person so appointed holds, not for the unexpired term of the treasurer who died, but until a successor is elected and qualified, which successor under the statute should be elected for the unexpired term of the person who died, at the general election to be held on the first Tuesday after the first Monday in November, 1930. *State of Ohio ex rel Trauger vs. Nash, Governor*, 66 O. S., 612; *State of Ohio ex rel. J. J. Ansberry vs. Slough*, 12 O. C. C., 105; *State of Ohio ex rel. Ingraham vs. Lehman*, 10 O. C. C., 328; *State ex rel. Burke vs. Comer et al.*, 7 O. C. C., 258.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1888.

APPROVAL, CONTRACTS ON ROAD IMPROVEMENTS IN ASHTABULA,  
CUYAHOGA AND WILLIAMS COUNTIES.

COLUMBUS, OHIO, May 20, 1930.

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

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1889.

COUNTY COMMISSIONERS—AUTHORIZED TO REIMBURSE PERSON  
BITTEN BY DOG AFFLICTED WITH RABIES FOR EXPENSES OF  
VETERINARIAN AND LABORATORY DIAGNOSIS OF SUCH DOG'S  
HEAD.

SYLLABUS:

*Under the provisions of Section 5851 of the General Code, the county commissioners are authorized to reimburse a person who has been bitten or injured by a dog, cat or other animal afflicted with rabies, the expense of having the animal examined by a veterinarian and sending its head to a laboratory for diagnosis.*

COLUMBUS, OHIO, May 21, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“The county commissioners of this county have been asked to pay the expense account of a person bitten by a dog that had the rabies, and as part of that expense account there is an item of \$7.00 due to the veterinary for examination of the dog, and the sending of the head to the laboratory at Columbus.

The question arises as to whether or not under Section 5851, G. C., the services of a veterinary in making the examination of the dog and in taking care of, and sending the head to Columbus, together with the incidental