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WHEN AN ELECTED CLERK OF A BOARD OF EDUCATION RESIGNS, THE BOARD IS AUTHORIZED TO APPOINT A CLERK UNTIL THE FIRST MONDAY IN JANUARY NEXT ENSUING—§3313.22, R.C., Opinion 3268, OAG, 1948, §3313.14, R.C.

SYLLABUS:

Where a clerk of a board of education, elected by the board under Section 3313.22, Revised Code, resigns during his term, the board of education is authorized to appoint a clerk to hold office only until the first Monday in January next ensuing. (Opinion No. 3286, Opinions of the Attorney General for 1948; page 268, approved.)

Columbus, Ohio, August 23, 1962

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Section 3313.22, Revised Code, relative to the election of the clerk of a board of education was amended effective October 23, 1961. This section, as amended, provides in part :

“ ‘The board of education of each local, exempted village and city school district at an organizational meeting shall elect a clerk * * *. The clerk shall initially serve for a two year probationary term and thereafter, if reappointed, shall serve for a four year term. * * *.’

“The Attorney General in his Opinion No. 3268 issued under date of June 8, 1948, held :

“ ‘that where a clerk of a board of education of a local, exempted village or city school district resigns during the term for which he has been elected, the board of education is authorized to appoint a clerk to hold office only until the first Monday in January next ensuing.’

“Giving consideration to Section 3313.22, Revised Code, as amended, will you please issue your formal opinion on the following question which is of statewide interest.

“Under the provisions of Section 3313.22, Revised Code, amended, when a clerk resigns during the term for which he has been elected, may a board of education legally elect a clerk :

“(1) To serve a two-year probationary term beginning on the date of election, or

“(2) To serve only from the date of election until the first Monday in January next ensuing.

“May we hear from you at your earliest convenience.”

Section 3313.22, Revised Code, reads as follows :

“The board of education of each local, exempted village, and city school district at an organization meeting shall elect a clerk who may be a member of the board and in the case of a local school district such clerk may be a teacher regularly employed as a teacher by such board. The clerk shall initially serve for a two-

year probationary term and thereafter, if reappointed, shall serve for a four-year term. Such clerk may be removed at any time for cause by a two-thirds vote of the entire board. If reappointed as provided in this section the board shall execute a written contract of employment for such four-year term and each four-year term thereafter. In the case of a county board, the county superintendent shall act as clerk of such board, but the tenure and removal provisions described in this section shall not apply to him."

It will be noted that under Section 3313.22, *supra*, the election of a clerk is held at an *organizational* meeting of the board. In this regard, Section 3313.14, Revised Code, reads in part:

"The board of education of each city, exempted village, and local school district shall meet on the first Monday of January of each year, and shall organize by electing one of its members president, both of whom shall serve for one year.

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In view of the provisions of Section 3313.14, *supra*, I am of the opinion that the election of a clerk to a two-year probationary term, or a four-year term on reappointment, may be done only at an organizational meeting held on the first Monday of January.

I have found no provision for the filling of the vacancy when the clerk resigns, but authority for such must be implied since many important duties are imposed by law, and by the board, on the clerk, and it is necessary that some one be appointed to fill the vacancy.

The filling of the vacancy can be only temporary, however, since a regular election can be held only at an organizational meeting. Thus, the appointee will serve until a clerk can be elected at the next organizational meeting. In this regard, I concur with the conclusion of the syllabus of Opinion No. 3268, Opinions of the Attorney General for 1948, page 268, which syllabus reads:

"Where a clerk of a board of education of a local, exempted village or city school district resigns during the term for which he has been elected, the board of education is authorized to appoint a clerk to hold office only until the first Monday in January next ensuing."

While the statute considered in Opinion No. 3268 (former Section 4841, General Code), differed to some extent from present Section 3313.22, *supra*, the question of interpretation in that opinion was the same as here presented.

Answering your specific question therefore, where a clerk of a board of education, elected by the board under Section 3313.22, Revised Code, resigns during his term, the board of education is authorized to appoint a clerk to hold office only until the first Monday in January next ensuing. (Opinion No. 3286, Opinions of the Attorney General for 1948, page 268, approved.)

Respectfully,

MARK McELROY

Attorney General