

no limitation is placed upon such a union so far as the class of school districts is concerned. The statute expressly provides that the boards of education of two or more adjoining school districts may by following the procedure outlined, effect a union of school districts for high school purposes. The language of the statute is clear, and needs no interpretation.

The mere fact that in Section 7671-2, General Code, it is provided that upon dissolution, the county board of education of the county in which the joint school districts exist, shall make such adjustments as may in its judgment be deemed equitable, and act as an umpire in the settlement between the districts involved in the event the boards of education in those districts cannot agree, can make no difference, in my opinion, as to the right of districts to effect a joinder for high school purposes, whether they be districts under the control of the county board of education or not. It would no doubt be within the power of the legislature to provide that in case of dissolution of a joint high school and failure of the districts involved to agree upon the terms of dissolution, the county commissioners or the county auditor, or any other person or board or official might act as umpire or referee with respect to settling the matter.

I am therefore of the opinion in specific answer to your question that, under the terms of Sections 7669 et seq., of the General Code of Ohio, a union of school districts for high school purposes may be effected, regardless of the class of districts involved.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6442.

RECORDER—APPOINTEE WHERE COUNTY RECORDER DIES
AFTER ELECTION BUT BEFORE BEGINNING OF TERM.

SYLLABUS:

Where an incumbent of the office of county recorder dies shortly after the general November election of 1936, at which he was re-elected county recorder, under the provisions of section 2750, General Code, as amended by House Bill 603 of the first special session of the 91st General Assembly, for a term of four years, beginning on the first Monday of January, 1937, and the county commissioners, acting under authority of section 2755, General Code, appoint a suitable person to fill the vacancy in such office, such person holds the office until a successor, who shall be elected at the general November election of 1938, has qualified after such

election for the remainder of the unexpired portion of the four year term to which such deceased recorder had been elected.

COLUMBUS, OHIO, November 30, 1936.

HON. SAM J. HETZLER, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR: This acknowledges receipt of your recent communication which reads as follows:

“At the general election held November 3, 1936, Gid E. Cyphers was elected to his second term of the office of County Recorder of Shelby County (said term being for a period of four years). On the morning of November 15, Mr. Cyphers died. Under Section 2755 of the General Code, the Board of County Commissioners are required to appoint a successor.

Question: How long will such seccessor, so appointed by the Board, hold office?”

Article XVII, Section 2 of the Ohio Constitution, and Sections 2755 and 10, General Code, are pertinent in the consideration of your question. They provide so far as pertinent:

Art. XVII, Sec. 2. “* * * All vacancies in other elective offices (other than state offices and member of the General Assembly) shall be filled for the unexpired term in such manner as may be prescribed by law.”

Sec. 2755. “If a vacancy occurs in the office of the recorder, the commissioners shall appoint a suitable person to fill it, who shall give bond, take the oath of office, as provided by law for county recorders, and shall hold his office until his successor is elected and qualified.”

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.”

In the case of *State ex rel. John M. Sheets, Attorney General vs. Speidel, et al.*, 62 O. S., 156, it was held, as disclosed by the second paragraph of the syllabus:

“When one who is holding the office of sheriff, and is a candidate for election to succeed himself, dies before entering upon the new term, a vacancy is thereby created in the term in which he was serving, but not in the term for which he was a candidate and upon which he had not entered; and one who is duly appointed and qualified to fill the vacancy thus created will hold the office for and during the unexpired term of his predecessor, and until his successor is elected and qualified; and such election must be had at the first proper election that is held more than thirty days after the occurrence of the vacancy.”

The foregoing syllabus was followed and approved by the Supreme Court in the case of *State ex rel. v. Pask*, 126 O. S., 633, at pages 638, 639 and 640, which case was decided in 1933. The *Speidel* case was decided on March 6, 1900. In the course of the opinion of the *Speidel* case the court cited Sections 1208 and 11 of the Revised Statutes, which sections are now Sections 2828 and 10, General Code, respectively. At the time in 1900 that the foregoing case was decided, Sections 1208 and 11 of the Revised Statutes read as follows:

Sec. 1208 Rev. Stat. “When the office of sheriff becomes vacant, the county commissioners shall appoint some suitable person to fill the vacancy, who shall give bond and take the oath of office prescribed for the sheriff, and hold his office for and during the unexpired term of the sheriff, whose place he fills; and when the sheriff is incapable, by reason of absence, sickness, or other disability, of serving any process required to be served, or by reason of interest is incompetent to serve the same, the court of common pleas, if in session, or any judge thereof in the district, if the court is not in session, may appoint some suitable person to serve such process, or to perform the duties of sheriff during the continuance of such disability, and such appointee shall give such bond, conditioned for the faithful performance of his duties, as such court or judge requires, and shall take the oath of office.”

Sec. 11. “When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held more than thirty

days after the occurrence of the vacancy; but 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 of the same, of any one elected to such office before the occurrence of such vacancy.”

Section 2828, General Code, now reads :

“When the office of sheriff becomes vacant, the county commissioners shall appoint a suitable person to fill the vacancy. The person so appointed shall give bond, take the oath of office prescribed for the sheriff, and hold the office during the unexpired term. When the sheriff, by reason of absence, sickness or other disability is incapable of serving any process required to be served, or by reason of interest is incompetent to serve it, the court of common pleas, if in session, or, if not in session, a judge thereof in the district, may appoint a suitable person to serve such process or to perform the duties of sheriff during the continuance of such disability. Such appointee shall give such bond as the court or judge requires, conditioned for the faithful performance of his duties, and take the oath of office.”

It will be noted, upon comparing the wording of sections 1208 and 11, of the Revised Statutes, with the wording of sections 2828 and 10, General Code, that there has been no substantial change in the statutes which could now change the reasoning of the court applied to the then existing statutes to reach the conclusion as disclosed by the second paragraph of the syllabus of the Speidel case.

While Section 2755, General Code, applying to a county recorder, states that the appointee to fill a vacancy “shall hold his office until his successor is elected and qualified”, and Section 2828, General Code, applying to a county sheriff, states that the appointee to fill a vacancy “shall hold the office during the unexpired term”, Section 10, General Code, applicable in both instances provides that “such appointee shall hold the office until his successor is elected and qualified.”

It therefore is apparent that a person now appointed to fill the vacancy in the office of county recorder will not only fill out the unexpired portion of the first term of the late recorder, but will continue on in the second term of the late recorder, and until a successor can be elected and qualified. This conclusion is in harmony with similar conclusions reasoned on similar facts in connection with the filling of vacancies in other county offices, to wit, county commissioner and county auditor,

which conclusions are to be found in Opinions of the Attorney General for 1917, Vol. I, page 462, and Opinions of the Attorney General for 1919, Vol. II, page 1077.

At the time of the rendition of the decision in the Speidel case, Section 11, Revised Statutes, read, as noted above, that the "successor shall be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy." Section 10, General Code, now provides that 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."

Under Section 4785-4c, General Code, general elections for state and county officers generally, shall be held in even numbered years. Hence, it would seem that the next possible election at which a successor may be elected in this instance is at the November election in 1938.

By House Bill 603 (116 O. L. Pt. 2, page 184) of the first special session of the 91st General Assembly, Section 2750, General Code, was amended to provide a term of four years for a county recorder, beginning on the first Monday in January after his election. In Opinion No. 5420, rendered April 27, 1936, this office, in effect, held such amendment of Section 2750, General Code, applied to county recorders elected at the last general election in 1936.

In the case of *State ex rel. v. Troxel*, 125 O. S. 235, the court was construing the meaning of the words in section 10, General Code, viz., "first general election for the office which is vacant", as applied to the filling of a vacancy, by election in the office of county auditor, an office having a four year term under section 2558, General Code, when the vacancy occurred in 1931 a short time after the four year term had begun in 1931 after the general election of 1930. It was conceded as a fact in such case that general elections for county auditors occurred only every fourth year (an even numbered year, and therefore a regular election for such office occurred in 1930, 1934, etc.). The court held that the successor should be elected to fill the vacancy in the office of the county auditor, under the language of section 10, General Code, at the general election of November 1932, instead of at the general election of 1934. It follows that the present situation is exactly analogous to that presented in the *Troxel* case.

Thus, in specific answer to your question, it would appear that the county recorder appointed to fill the vacancy will hold office until the time when a successor elected at the November election in 1938, can qualify after such election.

Very truly yours,

JOHN W. BRICKER,
Attorney General.