

OPINION NO. 66-155**Syllabus:**

When a vacancy in the office of township trustee occurred on November 19, 1965 by reason of the death of an incumbent who had been re-elected at the November 2, 1965 election for another term of office, and where such vacancy for the term ending December 31, 1965 was filled by appointment under the specific provisions of Section 503.24, Revised Code, there would be no vacancy in the office for the full term commencing January 1, 1966 and no new appointment is necessary, since the

person appointed to the unexpired term would continue in office in accordance with Section 3.01, Revised Code, for the entire unexpired term ending December 31, 1969 .

To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio
By: William B. Saxbe, Attorney General, September 13, 1966

Your request for my opinion reads as follows:

"One Oscar M. Kistler, incumbent trustee, who had just been re-elected on the 2nd day of November, 1965, died on the 19th day of November, 1965, and an inquiry was made of this office as to (1) how to fill the vacancy, and (2) how long the appointment would be valid.

"My research indicated there was no question that Ohio Revised Code Section 503.24 as to the method of filling the appointment within the thirty day period was the applicable one. However, the question that arose is as to the length of the time that the person who is appointed serves as trustee.

"In this latter connection I had examined your 1958 Ohio Attorney General Opinion #1651 as appearing at page 56 of the bound volume and of the Ohio Township Handbook published by the Bureau of Inspection and Supervision of Public Offices, Roger W. Tracy, Auditor of the State, 1964 Edition and I find some difficulty in reconciling or agreeing with this opinion as to the length of the appointment. I believe that an examination of Ohio Revised Code Section 3.01 which provides,

"'A person holding an office of public trust shall continue therein until his successor is elected, appointed, or qualified...'
has been interpreted to mean that if a vacancy were filled for the unexpired term and no vacancy with respect to the full term would occur because a person appointed to the unexpired term would continue in office and authority for this proposition is correctly set forth in your Attorney General Opinion #1651 referred to above, and also in State ex rel Sheets vs. Spindell, 62, Ohio State 156 and 44 Ohio Jurisprudence 2nd Section 186, page 688. However, Ohio Revised Code section 3.02 provides,

"When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant, that occurs more than forty days after the vacancy has occurred...'

"I feel that the general election means the first general election at which the particular office in question routinely comes up, not the first general election in point of time and to keep the elective offices in proper rotation, the appointee would continue in office until the person elected at the November 7, 1967 election is given a certificate of election, furnishes bond, takes the oath of office, and generally qualifies for the position, at which time the appointee would cease to hold office.

"In order that there is no misunderstanding as to the facts, the trustees made an appointment in December, 1965 within thirty days of the date of death of the said Oscar M. Kistler, however, they did not re appoint this man or any other person after January 1, 1966 which leaves open the question as to whether or not the municipal judge at this time could make an appointment for the term starting January 1, 1966 and if so, this appointee would also serve until the person who is elected and qualified at the November 7, 1967 general election takes office."

The question presented in your letter involves an apparent conflict between two statutes controlling the same subject matter. I note that Section 3.02, Revised Code, is a general statute which covers all elective offices in this state and provides the means whereby vacancies in such offices may be filled. This section reads in pertinent 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; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term

shall not be held and the appointment shall be for such unexpired term.

"* * * * *"

The statute with which the above section is in conflict is Section 503.24, Revised Code. This statute is a specific statute designed solely for filling vacancies in township offices. It reads as follows:

"If, by reason of the nonacceptance, death, or removal of a person chosen to an office in any township at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term.

"If a township is without a board or if no appointment is made within thirty days after the occurrence of a vacancy on the board, the county court of such county shall appoint suitable persons, having the qualifications of electors in the township, to fill such vacancies for the unexpired term.

"Wherever, in any township, a municipal court replaces the county court and there is no board of township trustees, or if no appointment is made within thirty days after the occurrence of a vacancy on the board, the municipal judge or the presiding municipal judge if there is more than one, may fill vacancies on the board. In those townships wherein there are no judges of a county court or municipal judges and there is no board of township trustees, or if no appointment is made within thirty days after the occurrence of a vacancy on the board, the probate judge may fill vacancies on such board."

The general rule of statutory construction provides that a special statute takes precedence over general statutes when both govern the same subject matter. This principle was set forth by the Supreme Court of Ohio in Fisher Bros. Co. v. Bowers, 166 Ohio St. 191 at 196, as follows:

"We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter. State, ex rel. Steller et al., Trustees v. Zangerle, Aud., 100 Ohio St., 414, 126 N.E. 413; State, ex rel.

Elliot Co., v. Conner, Supt., 123 Ohio St. 310, 175 N.E., 200 Acme Engineering Co., v. Jones, Admr., 150 Ohio St. 423, 83 N.E. (2d), 202; Johnson v. United Enterprises, Inc. ante, 149."

It is therefore my conclusion that vacancies occurring in a township office are to be filled pursuant to the provisions of Section 503.24, Revised Code, which operates as a special exception to the general provisions of Section 3.02, Revised Code.

According to the facts in this case, the board of township trustees made an appointment in December, 1965 under the authority of the first paragraph of Section 503.24, supra, to fill the unexpired term of office in which the deceased trustee was serving at the time of his death. In the case of State, ex rel. Sheets v. Speidel, 62 Ohio St. 156, citing with approval, State ex rel. v. Dahl, 55 Ohio St. 195, it was held at page 160 that an appointee to an unexpired term had the "right to remain until his successor was elected and qualified" and "there could be no vacancy then unless Walker /the appointee/ should die, resign, or be lawfully removed for cause."

In State, ex rel. Hoyt v. Metcalfe, 80 Ohio St. 244, the court held that the rule set forth in the above paragraph was applicable in the case of a judicial office and that the attempt to make an appointment to an elective judicial office at the beginning of a new term by the Governor was void because the incumbent held over and there was no vacancy.

Accordingly, it is my opinion and you are advised:

Where a vacancy in the office of township trustee occurred on November 19, 1965 by reason of the death of an incumbent who had been re-elected at the November 2, 1965 election for another term of office, and where such vacancy for the term ending December 31, 1965 was filled by appointment under the specific provisions of Section 503.24, Revised Code, there would be no vacancy in the office for the full term commencing January 1, 1966 and no new appointment is necessary, since the person appointed to the unexpired term would continue in office in accordance with Section 3.01, Revised Code, for the entire unexpired term ending December 31, 1969.