

**OPINION NO. 66-176****Syllabus:**

1. Under the statutory nominating procedures, a candidate for the office of county judge cannot qualify himself after August 8, 1966, and have his name placed on the ballot at the election to be held in November, 1966.

2. The person appointed by the Governor to a vacancy in the office of county judge, shall hold office until his successor is elected and has qualified.

To: John F. Marchal, Darke County Pros. Atty., Greenville, Ohio  
By: William B. Saxbe, Attorney General, November 10, 1966

This is to acknowledge the receipt of your recent communication in which you request my opinion upon questions stated therein as follows:

"On September 1, 1966, Governor Rhodes appointed a local attorney with the requisite qualifications to a vacancy in one of the offices of the County Court Judges of this County. The appointment states that it is made on September 1, 1966, until December 31 1966, or until a successor is qualified.

"Section 13, Article 4 of the Ohio Constitution provides that the Governor shall make the appointment to fill the vacancy but provides that the successor shall be elected at the first general election which occurs more than forty days after the vacancy occurs. Section 107.08 of the Ohio Revised Code provides that the Governor make the appointment but that a successor shall be elected at the first general election which occurs more than thirty days after the appointment filling the vacancy. Since the general election on November 8, 1966, will fall more than forty days after the vacancy occurred and will also fall more than thirty days after the appointment was made, it is my opinion that an election is to be held November 8, 1966, for the unexpired term to elect a successor for the unexpired term which remains in said judgeship.

"Therefore, I would like your opinion on the following questions:

"(1) Under what provisions of law or in what manner is said election to be held or in what manner may a person qualify himself as a candidate and have his name placed on the ballot at the election to be held in November, 1966?

"(2) Even though the Governor has filled the vacancy by appointment, and even though the appointment states that it is for the period from September 1, 1966, until December 31, 1966, or until a successor is qualified, may the person receiving said appointment, in fact, continue to serve as County Court Judge under said appointment beyond November 8, 1966?"

Additional facts, solicited by telephone, indicate that a candidate was elected to the office of county court judge in the November, 1964, election for the full four year term, commencing January 1, 1965 and ending December 31, 1968. This person assumed the office and performed the

duties of judge until September 1, 1966 when the State Auditor reported that this person had not filed bond, as required by law, and thereby did not qualify for the office. This was the basis for the gubernatorial appointment of September 1, 1966.

Of first consideration are the statutory provisions concerning the filling of a vacancy in the office of county court judge found in Section 1907.041, Revised Code, the applicable portion of which states:

" \* \* \*                    \* \* \*                    \* \* \*

"Vacancies caused by the death, resignation, forfeiture, or removal from office of a judge shall be filled in accordance with section 107.08 of the Revised Code except as provided in section 1907.071 of the Revised Code."

Section 107.08, Revised Code, referred to above, provides:

"The office of a judge is vacant at the expiration of the term of the incumbent when no person has been elected as his successor. Such vacancy shall be filled by appointment by the governor. A successor shall be elected for the unexpired term at the first general election for the office that occurs more than thirty days after such appointment."

It should be noted that a candidate for the office of county court judge is not a candidate in the primary election. A qualified person becomes a candidate for such office under the provisions of Section 1907.051, Revised Code, which states, in the applicable portion:

" \* \* \*                    \* \* \*                    \* \* \*

"All candidates for county court judge shall be nominated by petition. The nominating petition shall be in the general form and signed and verified as prescribed by section 3513.261 of the Revised Code, and shall be signed by qualified electors of the county court district not less in number than one per cent of the number of electors who voted for governor at the next preceding regular state election in the district; provided that no such nominating petition shall be accepted for filing or filed if it appears on its face to contain signatures aggregating in number more than twice the minimum aggregate number of signatures required by this section. Such petition shall be filed with the board of elections not later than four p.m. of the ninetieth day before the day of the general election."

Further, the applicable portion of Section 1907.051, supra, provides:

" \* \* \* \* \* "

"Judges shall be elected by the electors of the county court district at the general election in the even numbered years, for a term of four years commencing with the first day of January next following the election for such court.

" \* \* \* \* \* "

Also to be considered, as stated in your letter, is Section 13, Article IV, Ohio Constitution, which states:

"In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and has 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 shall have occurred; provided, however, 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."

Applying these statutory and constitutional provisions to your first question, the office of county court judge should be filled at the November, 1966, election for the remainder of the unexpired term as provided by Section 13, Article IV, Ohio Constitution, supra. But as provided by Section 1907.051, supra, a candidate for the office of county court judge must file his nominating petition 90 days prior to the general election. Therefore, there is no statutory machinery whereby a candidate can now have his name placed on the ballot for the November, 1966, election.

In answer to your second question, a similar situation was considered by one of my predecessors in Opinion No. 246, Opinions of the Attorney General for 1945, page 234, which states:

" \* \* \* \* \* "

"The appointment of a successor by the governor to fill the first vacancy, specifies that the appointee is to serve until a successor is elected and has qualified.

" \* \* \* \* \* "

"The mere fact that the commission in the one case fails to specify that the appointee is to serve until the first day of January, 1946 would in no way affect the right of such appointee to serve until said date."

As stated in your letter, the commission of appointment from the Governor states that the term shall be "until December 31, 1966, or until a successor is qualified." The language used in Section 13, Article IV, Ohio Constitution, supra, is that the term shall be "until a successor is elected and has qualified." It is my opinion that the constitutional provision shall prevail and the person appointed September 1, 1966 shall hold office until his successor is elected and has qualified.

Therefore, in specific answer to your questions, it is my opinion and you are advised that:

1. Under the statutory nominating procedures, a candidate for the office of county judge cannot qualify himself after August 8, 1966, and have his name placed on the ballot at the election to be held in November, 1966.

2. The person appointed by the Governor to a vacancy in the office of county judge, shall hold office until his successor is elected and has qualified.