

593.

CORONER—VACATED OFFICE—COUNTY COMMISSIONERS CAN MAKE
TEMPORARY APPOINTMENT.

COLUMBUS, OHIO, July 3, 1929.

SYLLABUS:

Section 2829 of the General Code and its related sections do not authorize the appointment of a person to discharge the duties of a coroner in anticipation of occasions arising when such officer will be unable for the reasons therein set forth to serve. Such appointment can only be made to meet a present existing inability of the officer to serve. When such temporary appointment is made, the duties of such person cease when the contingency ends which gave rise to his appointment.

COLUMBUS, OHIO, July 3, 1929.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

“I wish to direct your attention to Section 2829, G. C. O., which reads as follows:

‘When the office of coroner becomes vacant by death, resignation, expiration of the term of office or otherwise, or when the coroner is absent from the county, or unable from sickness or other causes to discharge the duties of his office, the county commissioners shall appoint a suitable person to fill the vacancy, who shall give bond and take the oath of office as prescribed for the coroner. When such person is temporarily acting in the capacity of coroner he shall receive the compensation equivalent to that allowed by law to coroners in such cases.’

Formerly under Section 1745, now repealed, a justice of the peace might perform the duties of coroner during the latter’s temporary absence from the county, or sickness, or if for any reason there was a vacancy. The present section, however, as above quoted, requires that the county commissioners, in all of such cases appoint a person to fill the vacancy, and requires further that he give bond and take the oath of coroner.

Since the board of commissioners is not at all times in session, and since cases arise requiring the immediate attention of the coroner, or of a person to act as such coroner, should the coroner not be available, I am asking you for your opinion as to whether the commissioners would be authorized by the above quoted section to make a permanent or standing appointment of a suitable person to perform the duties of coroner when the services of the coroner cannot be obtained.”

Section 2829 of the General Code was amended by the 87th General Assembly, 112 O. L. 204. The section originally provided:

“When the office of coroner becomes vacant, the county commissioners shall appoint a suitable person to fill the vacancy, who shall give bond and take the oath of office as prescribed for the coroner.”

Section 1745, General Code, to which you refer as being repealed provided:

“When the office of coroner becomes vacant by death, resignation, expira-

tion of the term of office, or otherwise, or when the coroner is absent from the county, or unable from sickness or other cause to discharge the duties of his office, a justice of the peace of the county shall have the powers and duties of the coroner to hold inquests. When acting in the capacity of coroner, a justice may receive the fees allowed by law to coroners in such cases."

From the above, it will be observed that when the Legislature saw fit to repeal Section 1745 of the General Code, which authorized justices of the peace to perform the duties of the coroner when the coroner was unable from various causes to discharge the duties of his office, it apparently amended Section 2829 so as to authorize someone to act on behalf of the coroner in cases other than when the office became vacant as mentioned in Section 2829, before its amendment. However, the section as amended seems to contemplate the appointment of a suitable person to discharge the duties of the office of coroner requiring him to take oath and qualify in the same manner as the coroner. Clearly, said section authorizes such appointment in case of a permanent vacancy. Likewise, it is clear that such an appointment may be made to authorize the discharge of the duties of the coroner when he is absent from the county or is ill, thereby authorizing the appointment of a person to act in a temporary capacity.

However, it is believed that this section does not contemplate the appointment of a person to act as a deputy or assistant. On the other hand, it contemplates an appointment to authorize such a person to discharge the duties of a coroner in a given instance, and, undoubtedly, the resolution making such an appointment should recite the conditions which authorize such appointment. As above indicated, there is no provision in the statutes for the appointment of an assistant or deputy coroner.

The conclusions herein reached are in accord with an opinion of my predecessor, found in Opinions of the Attorney General for the year 1927, page 2126, which considered, among others, the question you present. The fifth branch of the syllabus of said opinion reads:

"Appointments of persons to perform the duties of county coroners during the time of such coroner's absence from the county, or inability from sickness or other causes to discharge the duties of his office, continue only for the period of such disability and if after such disability the duly elected and qualified coroner resumes the duties of his office and again becomes temporarily disabled to perform the duties of his office, or is absent from the county, another appointment should be made and such appointee is required to qualify for the performance of the duties incident to such appointment by giving bond and taking oath of office, even though he be the same person that had previously been appointed to fill a temporary vacancy in the same position, and had previously given a bond and taken an oath of office."

You are therefore advised that, under existing law, there is no authority for the county commissioners to appoint a person permanently to perform the duties of the coroner in cases where there is not a permanent vacancy. On the other hand, the statute contemplates the appointment of such a person for each temporary case arising when the coroner is, for some reason, unable to discharge the duties of his office. When such temporary service is performed, the duties of such person end.

Respectfully,

GILBERT BETTMAN,

Attorney General.