

OPINION 65-9**Syllabus:**

Under the Constitution of Ohio there can be no election in 1965 for the unexpired term of Roger W. Tracy, deceased, the elected auditor of state.

To: Ted W. Brown, Secretary of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, January 22, 1965

I am in receipt of your request for my opinion which reads in material part:

"As you know, I am concerned over the question of whether or not I should accept for filing any declarations of candidacy which may be circulated to place on the 1965 general election ballot, candidates for the office of Auditor of State. I would appreciate it therefore if you will regard this letter as my official request for your opinion as to whether or not that office must be filled for the remainder of the unexpired term by election in 1965, and therefore whether or not my office should accept for filing any declaration or nominating petition."

Section 2, Article III, Constitution of Ohio provides:

"*** The auditor of state shall hold his office for a term of two years from the second Monday of January, 1961 to the second Monday of January, 1963 and thereafter shall hold his office for a four year term.***"

Roger W. Tracy, deceased, was elected in November 1962 to the office of auditor of state for a four year term from the second Monday of January, 1963 to the second Monday of January, 1967. He died November 9, 1964. The question you raise is whether under the Constitution of Ohio an election shall be held in November, 1965 to elect a successor to the unexpired term.

Section 18, Article III, Constitution of Ohio provides:

"Should the office of Auditor, Treasurer, Secretary, or Attorney General become vacant, for any of the causes specified in the fifteenth section of this article, the Governor shall fill the vacancy until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election, at the first general election that occurs more than thirty days after it shall have happened; and the person chosen shall hold the office for the full term fixed in the second section of this article."

(Emphasis added)

While a "general election" is defined in Section 3501.01, Revised Code, as "any election held on the first Tuesday after the first Monday in November" it appears that the term was not so used in the above constitutional provision. Significantly, it is further provided in Section 18, Article III, "and the person chosen (at the first general election occurring after the vacancy happens) shall hold the office for the full term fixed in the second section of this article." The auditor of state's term is fixed in Section II, Article III, by date as well as by number of years. The next term is that from the second Monday of January 1967 to the second Monday of January 1971. Without consideration of other constitutional provisions, then, it appears, that the "first general election" referred to in Section 18, Article III, is that for the full four year term commencing the second Monday of January 1967. Specifically, the election to be held in November 1966. Further provisions of the Ohio Constitution bear on this question, however.

The time for holding elections for state and county officers is provided for in Article XVII of the Constitution. Section I, provides:

"Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years. (Amended Nov. 2, 1954.)"

Section 2, of this same article provides in pertinent part:

"*** The auditor of state shall hold his office for a term of two years from the second Monday of January, 1961 to the second Monday of January, 1963 and thereafter shall hold this office for a four year term. ***"

"***

"Any vacancy which may occur in any elective state office other than that of a member of the General Assembly or of Governor, shall be filled by appointment by the Governor until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election at the first general election for the office which is vacant, that occurs more than thirty days after the vacancy shall have occurred. The person elected shall fill the office for the unexpired term. ***"

(Emphasis added)

It will be noted that Sections 1 and 2 of Article XVII, in their pertinent parts, follow closely the provisions of Sections 2 and 18 of Article III. The material difference is that Section 2 of Article XVII provides that the person elected at the first general election occurring more than thirty days after the vacancy is created shall fill the unexpired term, while Section 18 of Article III provides that the person "chosen" (a word which here seems to be synonymous with elected) shall hold office for the full term. This difference need not be resolved in this opinion, however, for whether the "next general election" for auditor of state is that fixed under Section 2 of Article III and Section 2 of Article XVII for the full four year term, or is, under the provisions of Section 1, Article XVII, the next even year election occurring more than thirty days after the vacancy occurs, the election is that to be held the first Tuesday after the first Monday in November 1966.

In specific answer to your question, therefore, be advised that under the Constitution of Ohio there can be no election in 1965 for the unexpired term of Roger W. Tracy, deceased, the elected auditor of state.