

section 5805-13, General Code, regardless of the quantity of agricultural seeds offered for sale or sold.

2. A salesman soliciting orders for agricultural seeds is not required to comply with the licensing provision of section 5805-13, General Code, when such orders are not solicited in any place where seeds are offered or exposed for sale, solicited for sale or sold.

3. The tags required to be affixed on packages or containers of agricultural seeds or mixtures must be placed thereon before leaving the premises of the vendor of agricultural seeds or mixtures.

4. The director of agriculture has no power, express or implied, to revoke a license issued by virtue of section 5805-13, General Code; nor does the director of agriculture have the power or authority, express or implied, to refuse to issue a license for the sale of agricultural seeds to one who has violated the provisions of the seed law of this state.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4080.

VACANCY—BOARD OF TOWNSHIP TRUSTEES—SELECTION OF SUCCESSOR TO FILL UNEXPIRED TERM UPON DEATH OF MEMBER—JUSTICE OF PEACE TO FILL VACANCY.

SYLLABUS:

1. *Where a member of a board of trustees of a township dies shortly before the beginning of a new term to which he had been elected, and a qualified elector in the township is appointed to fill the vacancy for the unexpired term in the manner provided by law, neither such appointee, nor a member of said board of trustees, who was defeated for re-election, is entitled to hold over after the expiration of the old term of said deceased member until a successor to him is elected and qualified.*

2. *In such a situation, the justice of the peace holding the oldest commission in the township, should appoint a qualified elector in the township to fill the vacancy for the new term of the deceased member, in accordance with the provisions of sections 3265 and 3262, General Code.*

COLUMBUS, OHIO, February 20, 1932.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

“Your opinion has been requested upon the following question concerning the office of Township Trustee and which is as follows:

‘C, F and L, were the duly elected, qualified and acting trustees of Brown Township, Carroll County, Ohio, for the term beginning January 1, 1930 and ending December 31, 1931.

At the election held November 1931, C, F, L and M were candidates for the election for the office of Township Trustee for the next ensuing

term. F, L and M having received the highest number of votes for said office were declared elected. On or about December 7 the said L who was serving as trustee and who was elected during the next ensuing term died, before having qualified for the new term. On December 28, 1931 after the last meeting of the Township Trustees, the Justice of the Peace of said Brown Township appointed one H to fill out the unexpired term of L. The said H filed his bond and was qualified for the position after the regular December meeting of the Trustees, which was held on the morning of December 28, 1931.

Question: Who is entitled to hold over until a successor to Mr. L is elected and qualified, Mr. C who was serving on the board and whose term expired December 31, 1931 or Mr. H who was appointed to fill the office for the unexpired term of Mr. L?"

Inasmuch as the trustees would like to organize in the near future, I would appreciate it if you could give me your opinion upon this question at your earliest convenience."

From the facts set forth in your communication, it appears that one H was appointed township trustee of Brown township, Carroll county, on December 28, 1931, to fill out the unexpired term of one L. This term of L expired on January 1, 1932, for section 3268, General Code, provides that "three trustees shall be elected biennially, in each township, who shall hold their office for a term of two years, commencing on the first day of January next after their election." There is no doubt from the facts disclosed in your letter that H was legally appointed for the unexpired term, as section 2 of Article XVII of the Ohio Constitution provides in the last sentence that

"all vacancies in other elective offices shall be filled for the unexpired term in such manner as may be prescribed by law."

and section 3262, General Code, reads:

"When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, shall appoint a suitable person or persons, having the qualifications of electors in the township to fill such vacancy or vacancies for the unexpired term. Wherever in any township a municipal court shall replace and supersede the justices of the peace, the municipal judge or the presiding municipal judge, if there be more than one, shall have the same powers to fill vacancies on the board of trustees."

It is likewise to be noted from the facts stated in your communication that at the election of the new board of trustees in November, 1931, there were four candidates for three places on the board, and that three of these candidates were candidates for re-election. In this situation, it is apparent that none of those elected, namely, F, L and M, could be designated as the successor of a particular former member, and if L had lived he could not have been regarded as his own successor in the new term. Hence, H, by reason of his appointment for the unexpired term of L, could not hold over and become L's successor in the new term.

Under the circumstances disclosed in your letter, the new term was neither an appendage of L's unexpired term, nor of C's expired term, and the case of *State ex rel. Hoyt vs. Metcalfe*, 80 O. S. 244, is not applicable. See *State ex rel. vs. Larson*, 110 O. S. 413, 414.

As I have pointed out in a preceding paragraph, in the appointment of H to fill the vacancy caused by the death of L, the justice of the peace acted under authority of section 3262, which limited the power of said justice of the peace to fill the vacancy "for the unexpired term." There was no vacancy in the office to which L was elected at the November, 1931, election until the beginning of the term for which he was elected. See *State ex rel. vs. Dahl*, 55 O. S. 195. At that time (January 1, 1932) there became a vacancy in the board of trustees, which should be filled for the term ending December 31, 1933, by the appointment of a person by the justice of the peace holding the oldest commission in the township under authority of sections 3265 and 3262, General Code. See *State ex rel. Spaulding vs. Baldwin*, 101 O. S. 65. The first mentioned of the two sections, above noted, reads as follows:

"If after receiving notice of his election or appointment, a person elected or appointed to a township office fails to take the oath of office and give bond within the time required by law, he shall be deemed to have declined to accept, and the vacancy shall be filled as in other cases."

In the case of *State ex rel. vs. Larson*, 110 O. S. 413, referred to above, the Supreme Court of Ohio had before it facts very similar to those set forth in your communication. The facts in said case disclose that one Hutchinson was elected councilman for the village of Rocky River, Ohio, for a two year term, beginning January 1, 1922. At the November election in 1923, he was re-elected for another term, but died on November 28, 1923. Shortly thereafter, one Christensen was elected by the council to fill out Hutchinson's unexpired term under authority of section 4236, General Code. On January 2, 1924, the council declared the office vacant and appointed one Larson to fill the vacancy, under authority of sections 4242 and 4236, General Code. Christensen brought a quo warranto action, seeking to oust Larson from office and praying that he be adjudged entitled to the office. The court denied the writ, stating at pages 414 and 415:

"The writ must be denied for two reasons:

1. It is disclosed that the council of the village of Rocky River consisted of six members elected at large. At the election of the new council in November, 1923, there were thirteen candidates for the six places on the council, some of whom were candidates for re-election. None of those elected could be designated as the successor of a particular former member, consequently had Hutchinson lived he could not have been regarded as his own successor in the new term, and, therefore, Christensen, by reason of his selection for the unexpired term of Hutchinson, could not hold over and become Hutchinson's successor in the new term. Under such circumstances the new term was not an appendage of the unexpired term, and the case of *State, ex rel Hoyt, vs. Metcalfe*, 80 Ohio St., 244, 88 N. E., 738, has no application.

2. In the appointment of Christensen to the vacancy caused by the death of Hutchinson the council acted under authority of Section 4236, General Code, which limited the power of council to fill the vacancy by election 'for the unexpired term.' There was no vacancy of the place

to which Hutchinson was elected at the November, 1923, election until the beginning of the term for which he was elected. *State, ex rel., vs. Dahl*, 55 Ohio St., 195, 45 N. E., 56. The action taken at that time by council was authorized by the provisions of Section 4242, General Code, which provides that council may declare vacant the office of any person elected or appointed to an office who fails to qualify therefor within the time required by law, and the election of Larsen to fill the vacancy was authorized by Section 4236, General Code. *State, ex rel., Spaulding, vs. Baldwin*, 101 Ohio St., 65, 127 N. E., 871."

It is obvious that the reasoning of the above case is dispositive of your query. I am therefore of the opinion, in specific answer to your question, that neither Mr. C nor Mr. H is entitled to hold over until a successor to Mr. L is elected and qualified, and I am further of the opinion that a suitable person having the qualifications of an elector in the township should forthwith be appointed for the remainder of the term to which L was elected in November, 1931, by the justice of the peace holding the oldest commission in Brown township, Carroll county, in accordance with sections 3265 and 3262, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4081.

SCHOOL TERRITORY—DISCRETIONARY WITH EXEMPTED VILLAGE SCHOOL DISTRICT TO ACCEPT TRANSFER FROM COUNTY BOARD OF EDUCATION—TUITION OF HIGH SCHOOL PUPILS RESIDING IN DISTRICTS WHERE NO HIGH SCHOOL LOCATED.

SYLLABUS:

1. *When a transfer of school territory is made by a county board of education to an exempted village school district, by authority of Section 4696 of the General Code, the board of education of the exempted village school district to which the transfer is made, in its discretion, may or may not accept such transfer.*
2. *School pupils of all grades are subject to assignment by the proper school authorities to the schools within the district of their residence, or to schools outside the district, if the proper school facilities suitable to their age and state of advancement are not obtainable within the district.*
3. *The tuition of pupils who are eligible to high school and who reside in districts in which no high school is maintained, must be paid by the school district in which they have a legal school residence.*
4. *When a high school is maintained by a board of education and resident high school pupils are assigned to this school, and transportation furnished thereto, the district can not be held for any tuition in the event the pupils choose to attend a school outside the district.*
5. *When a high school pupil is assigned, by authority of Section 7764 of the General Code, to a high school outside the district of his residence, which is more than four miles from his residence and transportation is furnished for him to that school by the board of education of the district of his residence that board is*