

958

1. VACANCY—OFFICE OF CORONER—SUCCESSOR TO AP-  
POINTEE—MUST BE ELECTED FOR UNEXPIRED TERM  
AT NEXT GENERAL ELECTION, FOR COUNTY OFFICERS  
WHICH OCCURS MORE THAN THIRTY DAYS AFTER  
VACANCY.
2. COUNTY CENTRAL COMMITTEE MAY SELECT EACH  
CANDIDATE OF EACH POLITICAL PARTY.
3. NAME OF PERSON SELECTED AND PROPER NOTICE  
SHALL BE GIVEN TO BOARD OF ELECTIONS OF COUN-  
TY, NOT LATER THAN SEVENTY-SIX DAYS BEFORE  
ELECTION DAY.

## SYLLABUS:

1. The successor to a person appointed to fill a vacancy in the office of coroner must be elected for the unexpired term at the next general election at which county officers can be voted for, which occurs more than thirty days after such vacancy was created.
2. Each of the candidates to be voted on for such unexpired term at such election may be selected by the county central committee of his political party.
3. Such selections, if made, shall be made by each of said committees at a meeting called for such purpose by the chairman of the committee by giving to each member of the committee at least two days' notice of the time, place and purpose of such meeting, and the chairman and secretary of the meeting shall certify, in writing and under oath, to the board of elections of the county, not later than the seventy-sixth day before the day of the election at which the person to fill such unexpired term is to be elected, the name of the person so selected.

Columbus, Ohio, May 23, 1946

Hon. Edward J. Hummel, Secretary of State  
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Hamilton County Board of Elections through their clerk, Mr. Carl R. Wenzel, has requested a formal opinion from your office on the following facts.

Mr. Frank M. Coppock, Jr., was duly elected as Coroner of Hamilton County, and his term was to expire the first Monday in January, 1949. Mr. Coppock died Friday evening, May 10, 1946. The question which the Hamilton County Board of Elections wishes answered is, first, whether or not there will be an election at the November 5, 1946 election for the unexpired term for the office of coroner, such term expiring the first Monday of January, 1949. Second, if question number one is answered in the affirmative, what is the procedure or possibility of the county party controlling committee selecting a candidate to fill the unexpired term of the late Frank M. Coppock, Jr."

The general provisions of law governing the election of persons for unexpired terms of office resulting from vacancies are set forth in Section 10 of the General Code, and read 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. Unless otherwise provided by law, such successor shall be elected for the unexpired term at the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred. \* \* \*"

In the instant case, the vacancy occurred on May 10 of this year. Therefore, unless it is otherwise provided by law, the successor to the person appointed to fill the vacancy must be elected for the unexpired term at the first general election that occurs more than thirty days after May 10. Section 2829, General Code, which deals with the filling of vacancies in the office of coroner, reads :

"When the office of coroner becomes vacant by death, resignation, expiration of the term of office or otherwise, or when the coroner becomes permanently unable to perform the duties of coroner, the county commissioners shall appoint a person with the qualifications of a coroner to fill the vacancy, who shall give and take the oath of office as prescribed for the coroner. When the coroner is absent temporarily from the county, or when on duty with the armed services of the United States or the state militia, or with the American Red Cross, or when unable to discharge the duties of his office, the coroner may appoint a person with the qualifications of coroner to act as coroner during such absence, service or disability."

Clearly, there is no language in the above section whereunder it is "otherwise provided" than in Section 10. It remains then to determine

when the next general election for the office of coroner that will occur more than thirty days after May 10 will be held. The term "general election" is defined in Section 4785-3, General Code, as "any election held on the first Tuesday after the first Monday in November". In Section 4785-4, General Code, it is provided:

"General elections in the state of Ohio and its political subdivisions shall be held as follows: \* \* \*

c. For the election of representatives in the congress of the United States, and of elective state and county officers, in the even numbered years; except as otherwise provided for filling vacancies. \* \* \*"

Similarly, in Section 1 of Article XVII of the Constitution of Ohio, it is provided:

"Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; \* \* \*."

A question involving the same principle as the one herein presented, dealing, however, with the office of county auditor, was considered and passed on by our Supreme Court in *State, ex rel. v. Troxel*, 125 O. S. 235, wherein it was held:

"The successor of an appointee appointed to fill a vacancy in the office of county auditor, which vacancy occurred more than thirty days before the next general election at which county officers can be voted for, must be elected at the next general election for county officers."

Therefore, since the coroner is an elective county officer the next general election for the office of coroner, which will occur more than thirty days after the vacancy in the instant case was created, will be the election to be held on the first Tuesday after the first Monday in November of this year, at which time the successor to the person named to fill such vacancy must be elected to serve for the unexpired term.

I turn now to your second question. In regard thereto, your attention is directed to Section 7 of Amended Substitute Senate Bill No. 216 of the 96th General Assembly, a temporary act effective August 4, 1945, and which, under the terms thereof, will remain in effect until December 31, 1947. Said Section 7 provides in part:

“If a person holding an elective office dies subsequently to the seventieth day before the day of a primary election and prior to the eightieth day before the day of the next general election, and if, under the laws of Ohio, a person may be elected at such general election to fill the unexpired term of the person who shall have died, the appropriate committee of each political party, acting as in the case of a vacancy in a party nomination, as in the first four paragraphs of this section provided for, may select a person as the candidate of its party for election for such unexpired term at such general election, and certify his name, and thereupon such name shall be printed as such candidate under proper titles and in the proper place on the party column or on the non-partisan ballots used at such election.”

The provisions of Section 7, referred to in the above quotation, which deal with the selection of candidates whose election is to be determined by the voters of a county, are set out in the third paragraph of said section, the material parts of which paragraph are as follows:

“If a person nominated in a primary election as a candidate for election at the next general election, whose election is to be determined by the voters of a county, or a district or subdivision within a county, shall withdraw as such candidate prior to the eightieth day before the day of such general election, the vacancy in the party nomination so created may be filled by the county central committee or a portion of the members thereof, of the political party which made such nomination at said primary election, at a meeting called for such purpose. If the candidate to be selected to fill the vacancy is one whose election will be determined by the electors of the county, the meeting called to fill such vacancy shall be comprised of all of the members of the county central committee of the proper political party. \* \* \* The meeting shall be called by the chairman of the county central committee, who shall give each member of such committee entitled to attend such meeting at least two days' notice of the time, place and purpose of such meeting. If a majority of the members of such committee entitled to attend the meeting are present at such meeting, a majority of those present may select a person to fill the vacancy. The chairman and secretary of the meeting shall certify in writing and under oath to the board of elections of such county, not later than the seventy-sixth day before the day of such general election, the name of the person so elected to fill such vacancy. Such certification must be accompanied by the written acceptance of such nomination by the person whose name is so certified.”

It is apparent from the above that the appropriate committees are, in the instant case, the county central committees of the respective political parties.

In specific answer to your question, you are, therefore, advised that in my opinion :

1. The successor to the person appointed to fill the vacancy in the office of coroner of Hamilton County, caused by the death of Dr. Frank M. Coppock, which occurred on May 10 of this year, must be elected for the unexpired term of Dr. Coppock on the first Tuesday after the first Monday of November, 1946.

2. Each of the candidates to be voted on for such unexpired term at such election may be selected by the county central committee of his political party.

3. Such selections, if made, shall be made by each of said committees at a meeting called for such purpose by the chairman of the committee by giving to each member of the committee at least two days' notice of the time, place and purpose of such meeting, and the chairman and secretary of the meeting shall certify, in writing and under oath, to the board of elections of the county, not later than the seventy-sixth day before the day of the election at which the person to fill such unexpired term is to be elected, the name of the person so selected.

Respectfully,

HUGH S. JENKINS  
Attorney General