

Inasmuch as there are no facts in your communication disclosing the nature of the incapacity in the present case, or how long it has existed, or is likely to exist, it is impossible to give you a more specific answer.

Respectfully,

GILBERT BETTMAN,

*Attorney General*

3602.

CANDIDATE—SHERIFF—CONSTITUTIONAL PROVISION, NO ONE SHALL HOLD SUCH OFFICE MORE THAN FOUR YEARS IN A SIX YEAR PERIOD, APPLICABLE.

*SYLLABUS:*

*Eligibility of candidate for county sheriff discussed.*

COLUMBUS, OHIO, September 25, 1931.

HON. ORVILLE WEAR, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads:

"In this County we have a man, who was a former Sheriff, and who went out of office on January 5th, 1931.

He was originally appointed to the office of Sheriff by the Clark County Commissioners, on December 12th, 1927, and served through until 1929, and was then re-elected for another term, finishing said term as above stated on January 5th, 1931.

He is desirous of running again in 1932 and if elected would assume office in January of 1933. In view of Section 3 of Article 10 of the Constitution, I am desirous of knowing whether or not he would qualify to run and, if elected, to hold office."

Article 10, Section 3, Ohio Constitution reads as follows:

"No person shall be eligible to the office of sheriff, or county treasurer, for more than four years, in any period of six years."

In an opinion found in the Opinions of the Attorney General for 1928, page 947, the then Attorney General in reviewing a question similar to yours, held as disclosed by the syllabus:

1. By the provisions of Article X, Section 3, of the Constitution of Ohio no person is eligible to the office of sheriff for more than four years in any period of six years.

2. When a person is elected to an office he is elected for the lawful term of that office and the question of his eligibility must be whether he is qualified to hold that office for the whole of that term, the law not contemplating an election to a part of a term.

3. By the provisions of Article X, Section 3 of the Constitution of Ohio, a person who has served as sheriff for three years and three

months in any period of six years, is ineligible to be a candidate for re-election to such office."

It should be noted that the person who is the subject of your inquiry was originally appointed to the office of sheriff by the Clark County Commissioners on December 12, 1927. Applying the six year constitutional provisions, above referred to, to the situation in question, it would seem that if the person concerned, if elected, will have served more than four years by December 12, 1933, he would be ineligible to run for election in 1932.

The period from December 12, 1927, to January 5, 1931, is composed of three years and twenty-three days. Under section 2823, General Code, a sheriff takes office the first Monday in January following his election. In the instant case the first Monday in January, 1933, when the sheriff would take office would be the 2nd of January. The elapsed time from January 2, 1933, to December 12, 1933, would be eleven months and nine days. Adding this figure to the three years and twenty-three days which he has already served, it would seem that said candidate, if elected, would serve by December 12, 1933, more than the four year period contained in the constitutional provision above quoted, even if a month is taken to contain thirty-one days.

I am therefore of the opinion that the person seeking the position of sheriff is not qualified to run in the 1932 election and consequently, if elected, would not be eligible to hold office.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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3603.

DISAPPROVAL, BONDS OF DECATUR TOWNSHIP RURAL SCHOOL DISTRICT, LAWRENCE COUNTY, OHIO—\$1,494.00.

COLUMBUS, OHIO, September 26, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:—Re: Bonds of Decatur Township Rural School Dist., Lawrence Co., Ohio, \$1,494.00.

The transcript relative to the above issue of bonds discloses that these bonds were authorized for the purpose of constructing improvements to a certain school building on August 29, 1931, without a vote of the electors. The financial statement submitted discloses that the total amount of property, as listed and assessed for taxation in the district, is \$821,960.00.

Section 2293-15, General Code, providing the limitations of net indebtedness which may be created or incurred by a school district without a vote of the people, provides in part as follows:

"The net indebtedness created or incurred by any school district without a vote of the people shall never exceed one-tenth of one per cent of the total value of all property in such school district as listed and assessed for taxation. \* \* \* \* \*"