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MUNICIPAL ELECTION, NEXT REGULAR—TERM AS USED
56 SECTION 4832-10 G.C.—ODD NUMBERED YEAR NEXT FOL-
LOWING CREATION OF VACANCY IN ANY BOARD OF EDU-
CATION—TIME FOR ELECTION OF PERSON TO FILL VA-
CANCY NOT LIMITED TO VACANCIES OCCURRING IN CITY
BOARDS OF EDUCATION.

SYLLABUS:

The term "next regular municipal election," as used in Section 4832-10, General Code, designates the odd numbered year next following the creation of a vacancy in any board of education as the time for the election of a person to fill such vacancy and is not limited to vacancies occurring in city boards of education.

Columbus, Ohio, March 14, 1952

Hon. William H. Harsha, Jr., Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

I am in receipt of your letter requesting my opinion as follows:

"In our office we have had occasion to interpret Section 4832-10 of the General Code of Ohio. The original section, before recent amendment by the Legislature, was meant to cover vacancies created in Boards of Education and it was our thought that the original section covered all Boards of Education, county, local and exempted village school districts.

“However, when reading the amended section 4832-10 the Legislature in setting up the procedure for filling the vacancy at the next subsequent election, uses the words *municipal election*. There now is certain question in our mind as to whether the Legislature meant this procedure of election to cover merely the vacancies in City School Boards or whether the word *municipal* was used in a more general sense and referred to any subdivision or district.

“Your assistance in the interpretation of this section of the Code is solicited and we would like your consideration and opinion in this concern.”

Prior to the amendment effective September 7, 1951, Section 4832-10, General Code, provided :

“A vacancy in any board of education may be caused by death, nonresidence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting. *A majority vote of all the remaining members of the board may fill any such vacancy for the unexpired term.*”
(Emphasis added.)

Under this section as then enacted, vacancies occurring in the membership of a board of education were filled by majority vote of the remaining members of the board and the member so appointed held office for the remainder of the unexpired term. A term then as now was four years under Section 4832-8, General Code, which provides :

“The term of office of members of such board of education shall begin on the first Monday in January after their election and each such officer shall hold his office for four years, except as otherwise provided by law, and until his successor is elected and qualified.”

By the amendment of September 7, 1951, the last sentence of this section was changed to read :

“* * * A majority vote of all the remaining members of the board may fill any such vacancy until the next regular municipal election at which *time* a member shall be elected to serve the unexpired term.”
(Emphasis added.)

In its present form, therefore, Section 4832-10, supra, authorizes the board to fill a vacancy caused by death, resignation, etc., only until such time as the vacancy can be filled by the electors.

Regarding the time and place of general elections in Ohio, Section 4785-4, General Code, provides in part:

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

“* * * d. For municipal and township officers, members of boards of education, judges and clerks of police and municipal courts, and justices of the peace, in the odd numbered years.
* * *”

It will be seen that both municipal elections and elections for members of boards of education are held in the odd numbered years. Section 4785-3, General Code, which defines the meaning of the terms used in the statutes relating to elections, make provision in part as follows:

“6. The term ‘regular municipal election’ shall mean the election held on the first Tuesday after the first Monday in November in odd numbered years.”

I think it is clear that the above provision contemplates an election every two years in the odd numbered years and, as used in Section 4832-10, supra, means the odd numbered year next following any vacancy in a board of education.

From the text of Section 4832-10 itself, it must be concluded that “next regular municipal election” was intended to refer to the *time* of holding the election and not intended in any way to be definitive of the nature of the election. By its very terms this section is made applicable when a vacancy has been created in “any board of education” and provides for such election at the “time” of the next municipal election.

In specific answer to your question, therefore, it is my opinion that the term “next regular municipal election,” as used in Section 4832-10, General Code, designates the odd numbered year next following the creation of a vacancy in any board of education as the time for the election of a person to fill such vacancy and is not limited to vacancies occurring in city boards of education.

Respectfully,

C. WILLIAM O'NEILL

Attorney General