

OPINION NO. 93-044**Syllabus:**

Pursuant to Ohio Const. art. IV, §13, a person who is appointed to fill a vacancy in the position of county court judge serves until the end of the unexpired term to which he was appointed where such unexpired term ends within one year following the date of the next general election for that office occurring more than forty days after the vacancy arises.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, November 16, 1993

You have requested an opinion concerning the period for which a person appointed to fill a vacancy in the position of county court judge may serve. According to information provided by your office, the county court judge who had been elected in 1988 to serve a six-year term, beginning January 1, 1989, resigned at the beginning of 1993, prior to the end of his term. The Governor then appointed a person, effective January 8, 1993, to fill the vacancy created by the judge's resignation. You question whether the appointee "serve[s] until December 31, 1994 or should there be an election held in the general election of 1993?"

Election of County Court Judges

Ohio Const. art. IV, §6(A)(4) states: "Terms of office of all judges shall begin on the days fixed by law, and laws shall be enacted to prescribe the times and mode of their election." Pursuant to this mandate, the General Assembly has provided for the election of county court judges in R.C. 1907.13, which states in part: "Judges shall be elected by the electors of the county court district at the general election in *even-numbered years* as set forth in [R.C. 1907.11] for a term of six years commencing on the first day of January next following the election for the county court or on the dates specified in [R.C. 1907.11] for particular county court judges. Their successors shall be elected in *even-numbered years* every six years." (Emphasis added.) Thus, elections for the office of county court judge occur only in even-numbered years.

Filling Vacancy in Office of County Court Judge

Concerning the filling of vacancies in judicial offices, Ohio Const. art. IV, §13 states:

In case the office of any judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and has qualified; and such successor shall be elected for the unexpired term, at the *first general election for the office* which is vacant that occurs more than forty days after the vacancy shall have occurred; provided, however, that *when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held* and the appointment shall be for such unexpired term. (Emphasis added.)

See also R.C. 1907.11(B)(2) ("[v]acancies caused by the death or the resignation from, forfeiture of, or removal from office of a [county court] judge shall be filled in accordance with [R.C. 107.08],¹ except as provided in [R.C. 1907.15]"² (footnote added)). Thus, pursuant to Ohio Const. art. IV, §13, where a vacancy occurs in the office of judge, such vacancy is required to be filled by appointment by the Governor. The appointee to the vacancy then serves until a successor is elected and qualified. The election of the successor is to occur "at the first *general election for the office which is vacan* that occurs more than forty days after the vacancy shall have occurred," Ohio Const. art. IV, §13 (emphasis added). This constitutional provision, however, provides an exception to the election of a successor at the next such general election where the unexpired term ends within one year following "the date of such general election."

Your concern is whether the successor to the former county court judge is to be elected in November, 1993, or in November, 1994. As noted above, pursuant to R.C. 1907.13, elections for the position of county court judge occur only in even-numbered years. Thus, the general election referred to in art. IV, §13 for the office of county court judge can occur only in even-numbered years. See *State ex rel. Ferguson v. Brown*, 2 Ohio St. 2d 235, 208 N.E.2d 129 (1965) (similarly interpreting the phrase "first general election for the office" of Auditor of State to be the first general election which, pursuant to Ohio Const. art. XVII, §1, occurs for state and county officers in even-numbered years). Accordingly, the first general election which will occur more than forty days after the vacancy in the office of county court judge will be the next general election held in an even-numbered year.

In the situation you describe, the vacancy in the position of county court judge occurred at the beginning of 1993. Since general elections for the position of county court judge may occur only in even-numbered years, the county may not conduct an election in 1993 to elect a successor to the county court judge position. Rather, the next general election for the office of county court judge which will be conducted more than forty days after the vacancy occurred will be held in November, 1994. The unexpired term of office of the county court judge in question ends, however, on December 31, 1994, which is within one year after the occurrence of the general election for that office. Thus, the person who was appointed by the Governor commencing January 8, 1993, to fill the vacancy in the office of county court judge in Erie County, will continue to serve through December 31, 1994, which is the remainder of the unexpired term to which he was appointed. Thereupon, the person elected in November, 1994 to the position of county court judge in Erie County will commence a new six-year term, beginning on January 1, 1995.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to Ohio Const. art. IV, §13, a person who is appointed to fill a vacancy in the position of county court judge serves until the end of the unexpired term to which he was appointed where such unexpired term ends within one year following the date of the next general election for that office occurring more than forty days after the vacancy arises.

¹ R.C. 107.08 states in relevant part: "A successor shall be elected for the unexpired term at the first general election for the office that occurs more than thirty days after such appointment."

² R.C. 1907.15 concerns the jurisdiction of county courts and the areas to be served by the county court judges in county court districts with more than one judge. In Erie County, however, there is only one county court judge. R.C. 1907.11(A).