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VACANCY—WHERE IT OCCURS IN OFFICE OF COUNTY RECORDER MORE THAN THIRTY DAYS BEFORE NEXT GENERAL ELECTION AT WHICH COUNTY OFFICERS CAN BE VOTED FOR, SUCCESSOR OF PERSON APPOINTED TO FILL SUCH VACANCY MUST BE ELECTED AT SUCH GENERAL ELECTION.

SYLLABUS:

Where a vacancy in the office of county recorder occurs more than thirty days before the next general election at which county officers can be voted for, the successor of a person appointed to fill such vacancy must be elected at such general election.

Columbus, Ohio, December 10, 1945

Hon. Russell C. Price, Prosecuting Attorney
Upper Sandusky, Ohio

Dear Sir:

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

"At the regular election in the fall of 1944, Charles Reed, Jr., was duly re-elected as Recorder of Wyandot County for a period of four years beginning the first Monday in January of 1945. He received his commission from the Secretary of State and duly qualified as such Recorder, and served on his new term for several days. Thereafter, he resigned and Hope Toops was appointed by the Commissioners of Wyandot County as Recorder to fill such vacancy.

Hope Toops thereafter received her commission from the Secretary of State which was apparently issued on the wrong form stating that she had been duly elected and would hold office for a term expiring the first Monday in January of 1949.

It would appear to me that your opinion number 100, rendered January 31, 1945, would be directly in point in this case except that the wording of the statute providing for how a vacancy is filled for a Recorder being Section 2755 of the General Code, is somewhat different than Section 2828 providing for the filling of a vacancy in the office of Sheriff.

We would appreciate your opinion as for what period of time or term Hope Toops will hold office as Recorder under her appointment, whether her term of office runs for the full unexpired term of her predecessor, or whether she will have to run for re-election in the fall of 1946."

The provisions of law prescribing the manner for the filling of vacancies in the office of county recorder are set out in Section 2755 of the General Code, which reads:

"If a vacancy occurs in the office of recorder, the commissioners shall appoint a suitable person to fill it, who shall give bond, take the oath of office, as provided by law for county recorders, and shall hold his office until his successor is elected and qualified."

In Section 10 of the General Code it is provided:

“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. * * *”

The vacancy in the instant case, as stated in your letter, occurred several days after the recorder who was elected in November, 1944 assumed office. Section 2750 of the General Code provides that the county recorder shall assume office on the first Monday in January next after his election and hold said office for a period of four years.

It, therefore, becomes necessary to determine when the first general election for the office of recorder, which occurs more than thirty days after the vacancy was created, will take place.

This question was squarely answered 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.”

In said case the question before the court was whether a county auditor should have been elected at the November election in 1932 or at the general election in 1934. The term during which the vacancy occurred was for four years commencing in March, 1931 and the vacancy occurred on July 25, 1931.

In commenting on the provisions of Section 10, *supra*, as the same were applicable to the case in hand, the court, speaking through Stephenson, J., stated :

“This section states plainly and succinctly that the successor of an appointee ‘shall be elected for the unexpired term at the *first general election* for the office which is vacant * * *.’

The November, 1932, election is a general election. It is the first general election after the vacancy was created. This case is not affected by the clause ‘unless otherwise provided by law,’ as, in our opinion, there is no other provision of law affecting the time of election.

The mere fact that the term of the county auditor is fixed at four years in no wise alters this statute."

In the instant case there is likewise no other provision of law affecting the time of election of a county recorder and, consequently, the words "unless otherwise provided by law," as the same appear in Section 10, supra, have no application.

You are, therefore, advised and it is my opinion that an election for the successor to the present appointee must be held at the general election held in November, 1946.

Respectfully,

HUGH S. JENKINS

Attorney General