

1879.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND H. J. WRIGHT, KENT, OHIO, FOR CONSTRUCTION OF CEMENT WALK, KENT STATE COLLEGE, KENT, OHIO, AT AN EXPENDITURE OF \$1,639.00—SURETY BOND EXECUTED BY H. J. WRIGHT AND METTA O. WRIGHT.

COLUMBUS, OHIO, May 19, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Board of Trustees of Kent State College, and H. J. Wright of Kent, Ohio. This contract covers the construction and completion of contract for cement walk (exclusive of contract for grading), Kent State College, Kent, Ohio, as set forth in Item 2 of the proposal dated November 16, 1929, as modified by the "Substitution Sheet" thereto attached, to substitute concrete walks, curb and abutments as per specifications, laid on present gravel base, omitting limestone base and the repair on walks around Library Building. Said contract calls for an expenditure of one thousand six hundred and thirty-nine dollars (\$1,639.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the consent of the Controlling Board to the release of funds has been obtained in accordance with Section 11 of House Bill No. 510 of the 88th General Assembly. In addition, you have submitted a contract bond upon which H. J. Wright and Metta O. Wright appear as sureties, in the penal sum of two thousand dollars, sufficient to comply with Section 2365-2, General Code.

Inasmuch as the amount of the contract is less than three thousand dollars, the exact provisions of Sections 2314 et seq. of the General Code, concerning filing of plans advertising and tabulating bids, did not have to be followed. It appears that the laws relating to the Workmen's Compensation Act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1880.

VACANCY—COUNTY TREASURER UNABLE TO QUALIFY AT BEGINNING OF SECOND TERM ON ACCOUNT OF HIS DEATH—TENURE OF OFFICE OF APPOINTEE—WHEN SUCCESSOR ELECTED—SHORT AND LONG TERM BALLOTS.

**SYLLABUS:**

1. *Where a vacancy occurs in the office of the county treasurer on September 2, 1929, and a person has been appointed by the county commissioners to fill said vacancy, a successor should be elected at the general election on November 4, 1930, to fill out the unexpired term, and said successor's tenure of office will begin on qualification after such election, and end on the seventh day of September, 1931.*

2. *There should also be elected at the November 4, 1930, election, a county treasurer to serve for the term of two years, beginning on the seventh day of September, 1931.*

COLUMBUS, OHIO, May 19, 1930.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“At the November election 1928 a treasurer was elected for Brown County, Ohio, who would have assumed office in September, 1929; however, in March 1929, prior to assumption of office and without qualifying for said office, the treasurer elect died. Thereupon the county Commissioners of Brown County appointed a treasurer for a period of two years, to begin in September of 1929.

The question has now arisen under Article 17 of the Constitution, Section 10 of the General Code of Ohio, as to how long said appointee may hold office, and whether there is now existent a short term to be filled, beginning after the regular November election to be held this year.

I understand your office has some opinion upon this question; if so I would like to have same, or if not I would like to have ruling of your department as to whether there is a short term, and also a regular term, to be nominated and elected at the August primary and November election.”

I have examined the records in the office of the Secretary of State, and have obtained supplementary information to that appearing in your communication. From the facts as submitted by you, it is not clear what provision was made to fill the vacancy caused by the death of the then incumbent, Mr. W. E. Mullen, in the county treasurer's office on March 4, 1929. However, I find that Mrs. Flora Mullen was immediately appointed by the county commissioners to fill out the first term of Mr. Mullen, ending on September 2, 1929, at which time Mr. M. B. Glasco, under appointment of the county commissioners, took office to fill the vacancy in the second term of the late Mr. Mullen.

The last sentence of Section 2 of Article XVII of the Ohio Constitution reads:

“\* \* \* All vacancies in other elective offices (than state officers and members of General Assembly) shall be filled for the unexpired term in such manner as may be prescribed by law.” (Matter in parentheses the writer's.)

Section 2632, General Code, provides as follows:

“A county treasurer shall be elected biennially in each county, who shall hold his office for two years from the first Monday of September next after his election.”

Section 2636, General Code, reads as follows:

“When the office of county treasurer becomes vacant by death, removal, resignation, neglect to give bond or other cause, the commissioners shall forthwith appoint a suitable person to fill such vacancy. The person so appointed shall give bond and take an oath as provided by law.”

It may be observed that the last quoted section does not fix the tenure of office of the person appointed to fill a vacancy in the office of county treasurer, and therefore the general law on the subject must be considered. Section 10, General Code, applies to the terms of appointees to elective office, and provides 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. This section shall not be construed to postpone the time for such election beyond that at which it would have been held had no vacancy occurred, nor to affect the official term, or the time for the commencement thereof, of any person elected to such office before the occurrence of such vacancy.”

From the provisions of the above section, it is apparent that a successor to an appointee, is elected to fill out 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. Article XVII, Section 1, Ohio Constitution, states that elections for county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years. Section 4785-4, General Code, likewise, provides in part that:

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

\* \* \*

c. For the election of \* \* \* elective \* \* \* county officers, in the even numbered years; except as herein otherwise provided for filling vacancies. \* \* \*”

Since Section 2632, supra, provides that a county treasurer shall be elected biennially and since the vacancy occurred in the present instance on September 2, 1929, it is obvious that the next general election for the office which is vacant, occurring more than thirty days after the vacancy, will occur on November 4, 1930. Hence the successor to the appointee should be elected then, to fill out the unexpired term. At the same time, (Nov. 4, 1930), there should be elected a person to fill the new term, beginning on September 7, 1931.

The above construction is borne out by former opinions of this office. In an opinion reported in Opinions of the Attorney General for the year 1920, Vol. I, page 270, the then Attorney General had before him the question of the tenure of office of one Mr. Marlatt who had been appointed to fill a vacancy in the office of county treasurer of Warren County. The facts disclosed that said Marlatt was appointed on November 3, 1919, to fill a vacancy in the county treasurer's office for a term which had begun on the first Monday in September, 1919. Said term would have ended on the first Monday in September, 1921, had there been no vacancy, inasmuch as Section 2632, General Code, supra, providing for the election and term of a county treasurer, read the same then as now. The then Attorney General held, as disclosed by the syllabus:

“The present appointee to the office of county treasurer of Warren County will hold office until his successor, who must be elected at the general election in November, 1920, for the unexpired portion of the regular term ending on the day preceding the first Monday in September, 1921, qualifies for and enters into the office, whereupon the tenure of office of such appointee will end.”

In the course of the opinion, it was stated:

“An examination of the statutory law of the state governing the tenure of office of the county treasurer and of appointees to fill vacancies therein, will disclose that the present appointee, Mr. Marlatt, is authorized to con-

tinue in office until his successor is elected and qualified; that such successor must be elected at the general election in November 1920, for the unexpired portion of the second term for which Mr. Sherwood was elected at the general election in November 1918; and that the person so elected will be entitled to take office as soon as he qualifies therefor, whereupon Mr. Marlatt's tenure of office will cease.

At the same general election in November, 1920, a county treasurer should also be elected for the regular two year term beginning on the first Monday in September, 1921."

In another opinion found in Opinions of the Attorney General for 1916, Vol. I, page 873, the then Attorney General had before him the question of the filling of a vacancy in the office of county surveyor. At that time, Section 2782, General Code, provided for the election of a county surveyor biennially, to take office on the first Monday of September of the following year, just as Section 2632, *supra*, now provides for county treasurers. There was no special provision in the statutes for the tenure of the appointee to fill a vacancy in the surveyor's office and so Section 10, General Code, *supra*, was applicable. It was held as disclosed by the syllabus:

"Where a vacancy in the office of county surveyor occurred in May, 1916, there should be elected at the November election, 1916, a person to fill the unexpired term, whose tenure of office will begin upon qualification after such election and end on the day preceding the first Monday of September, 1917. There should also be elected at the same election a surveyor for the term of two years, beginning on the first Monday of September, 1917."

The conclusion of the above opinion was followed and approved in Opinions of the Attorney General for 1928, Vol. I, page 504.

Based upon the above considerations and discussion, I am of the opinion that:

1. Where a vacancy occurs in the office of the county treasurer, on September 2, 1929, and a person has been appointed by the county commissioners to fill said vacancy, a successor should be elected at the general election on November 4, 1930, to fill out the unexpired term, and said successor's tenure of office will begin on qualification after such election, and end on the seventh day of September, 1931.

2. There should also be elected at the November 4, 1930, election a county treasurer to serve for the term of two years, beginning on the seventh day of September, 1931.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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1881.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENT IN HAMILTON COUNTY.

COLUMBUS, OHIO, May 19, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*