

**OPINION NO. 90-070****Syllabus:**

1. Pursuant to R.C. 3.15, a person serving as county coroner, whether elected or appointed, must be a resident of the county in which he serves at all times during his term of office. (1988 Op. Att'y Gen. No. 88-057, overruled in part; 1968 Op. Att'y Gen. No. 68-072, syllabus, paragraph two, overruled.)
2. The board of county commissioners has no authority to provide pursuant to contract for the services of a coroner for the county.
3. Pursuant to R.C. 3.06, the tenure of a deputy coroner ends at the time of the resignation of the coroner by whom he was appointed; such deputy coroner may continue to act in that capacity, however, upon appointment by the coroner's successor.
4. Pursuant to R.C. 305.02(F), where the office of coroner is vacant, the board of county commissioners may appoint a person to serve as acting coroner and to perform the duties of the coroner between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes office; such acting coroner need not be a resident of the county he serves, but must be properly certified to practice medicine in accordance with R.C. Chapter 4731.

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**To: John G. Gosling, Vinton County Prosecuting Attorney, McArthur, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September, 13, 1990**

I have before me your opinion request concerning various statutory requirements for service as county coroner. As stated in your letter of request, your questions concern the operation of the newly-enacted R.C. 3.15, Am. Sub. S.B. 196, 118th Gen. A. (1990) (eff. June 21, 1990), which establishes residency requirements for various public officers. In Vinton County the coroner plans to resign and no other qualified physician is currently a resident of the county. Based upon these facts, I have restated your questions as follows:

1. May a person serve as county coroner, whether by election or by appointment, where he will not reside in the county of appointment during his term?
2. May the board of county commissioners contract for the services of a coroner in the event that no one is available to serve as coroner? If so, what authority would such a "contract coroner" have under R.C. Chapter 313?
3. Where the coroner has appointed a deputy coroner who is a qualified physician, may such deputy continue to serve as deputy

coroner after the coroner by whom he was appointed has resigned? If the deputy coroner may continue in that capacity, may he be paid?

Your first question concerns the requirements imposed upon the office of county coroner by the newly-enacted R.C. 3.15 which states in part:

(A) Except as otherwise provided in division (B) of this section, at all times during his term of office:

....

(3) Each person holding an elective office of a political subdivision shall be a resident of that political subdivision.

....

(B) Any person who fails to meet any of the requirements of division (A) of this section that apply to him shall forfeit his office.<sup>1</sup> Division (A) of this section applies to persons who have been either elected or appointed to an elective office. Division (A) of this section does not apply to a member of the general assembly or the state board of education, to a member of a municipal legislative authority who represents a ward, or to a member of a board of education of a city school district who represents a subdistrict, during the remainder of his existing term of office after there is a change in his district's, ward's, or subdistrict's boundaries that leaves his permanent residence outside the district, ward, or subdistrict. (Footnote added.)

The position about which you ask is that of county coroner, created by R.C. 313.01 as a county elective office. Clearly, a county is a political subdivision of the state. *Zents v. Bd. of Commissioners*, 9 Ohio St. 3d 204, 459 N.E.2d 881 (1984). Thus, the plain language of R.C. 3.15(A)(3) requires that the person serving as coroner be a resident of the county in which he serves "at all times during his term of office," unless one of the exceptions in R.C. 3.15(B) exempts such office from the provisions of R.C. 3.15(A), or unless the terms of section three (uncodified) of Am. Sub. S.B. 196, *see note 1, supra*, apply. R.C. 3.15(B) further states that the residency requirement of R.C. 3.15(A) applies to persons holding such offices by election or by appointment.

The office of county coroner is not exempted from the requirements of R.C. 3.15(A) by R.C. 3.15(B). Further, the provisions of section three (uncodified) of Am. Sub. S.B. 196 exempt from the residency requirements of R.C. 3.15(A) only those persons holding office on the effective date of Am. Sub. S.B. 196, June 21, 1990. In the situation you describe, such uncodified section, therefore, exempts from the requirements of R.C. 3.15(A) only the person who held the office of coroner as of June 21, 1990. Thus, any person other than the person serving as coroner on June 21, 1990, whether elected or appointed, is subject to the residency requirement set forth in R.C. 3.15(A) at all times during his term of office.

In the situation about which you ask, the current county coroner intends to resign shortly, and you are concerned with the manner in which such resulting vacancy is to be filled. *See generally State ex rel. Harsha v. Troxel*, 125 Ohio St. 235, 181 N.E. 16 (1932) (describing the resignation of a county officer before expiration of the term to which he was elected as creating a vacancy); 1989 Op. Att'y Gen. No. 89-060 (recognizing resignation as a means of creating a vacancy in a public office). R.C. 305.02 sets forth the procedure for filling vacancies in county offices, in part, as follows:

(A) If a vacancy in the office of...coroner occurs more than forty days before the next general election for state and county officers, a

<sup>1</sup> Pursuant to section three (uncodified) of Am. Sub. S.B. 196, 118th Gen. A. (1990) (eff. June 21, 1990): "[R.C. 3.15] as enacted by this act does not apply to any officeholder described in division (A) of that section who holds the elective office on the effective date of this act for the remainder of his term of office."

successor shall be elected at such election for the unexpired term unless such term expires within one year immediately following the date of such general election.

In either event, the vacancy shall be filled as provided in this section and the appointee shall hold his office until a successor is elected and qualified.

(B) If a vacancy occurs from any cause in any of the offices named in division (A) of this section, the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and perform the duties thereof until a successor is elected and has qualified, except that if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.

....  
(F) The board of county commissioners may appoint a person to hold any of the offices named in division (A) of this section as an acting officer and to perform the duties thereof between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes the office.

Thus, when a vacancy occurs in the office of county coroner, R.C. 305.02 sets forth the method for filling such vacancy by appointment. R.C. 305.02(A) also provides for such appointee to serve in that office "until a successor is elected and qualified." See also R.C. 3.02 (concerning appointment to fill vacancies generally in elective offices). Since the vacancy created by the resignation of the current coroner is to be filled by appointment in accordance with R.C. 305.02, any such appointee would be subject to the residency requirement of R.C. 3.15(A) as a person "appointed to an elective office." R.C. 3.15(B).

Prior to the enactment of R.C. 3.15, I was asked to consider whether "an individual who possesses the requisite professional qualifications for the office of...[among others, county coroner] must be an elector and resident of the county in order to petition for election to such office." 1984 Op. Att'y Gen. No. 84-025 at 2-77. In that opinion I noted that although there was no residency requirement for holding such county offices, such requirement did exist for filing a petition for election to such offices. See R.C. 3513.05; R.C. 3513.261. Concerning the requirements for holding certain county offices, I stated:

Qualifications for the office of prosecuting attorney are set forth in R.C. 309.02, for coroner in R.C. 313.02, and for engineer in R.C. 315.02. None of these statutes contains a residency requirement for the holding of the office. Therefore, one possessing the requisite professional qualifications may be *appointed* to the appropriate office even though he is not a resident elector of the county in which he will serve. 1968 Op. Att'y Gen. No. 68-072.<sup>2</sup> As a result, in a

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<sup>2</sup> 1968 Op. Att'y Gen. No. 68-072, issued prior to the enactment of R.C. 3.15, concludes in syllabus, paragraph two: "The only residency requirement for one who is to be appointed to the office of county prosecuting attorney is that he be a resident of the State of Ohio for one year." Since the office of prosecuting attorney is an elective county office, *State ex rel. Finley v. Lodwich*, 137 Ohio St. 329, 29 N.E.2d 959 (1940) (syllabus, paragraph one), the residency requirement of R.C. 3.15(A)(3), set forth above, applies to the holder of such office, and requires that he be a county resident at all times during his term of office, subject to the exception prescribed by section three (uncodified) of Am. Sub. S.B. 196, see note 1, *supra*. Because of the enactment of R.C. 3.15, I hereby overrule 1968 Op. Att'y Gen. No. 68-072 (syllabus, paragraph two) to the extent that it is inconsistent with this opinion.

less-populous county having no resident professional who desires to serve as prosecuting attorney, engineer, or coroner, it is nonetheless possible to fill the office and ensure the performance of its functions. (Emphasis in original. Footnote added.)

Op. No. 84-025 at 2-77. Thus, prior to the enactment of R.C. 3.15, there was no requirement that a person appointed, rather than elected, to serve as county coroner be a resident of the county. The ability of a non-resident to serve as coroner facilitated the filling of that office in less-populous counties. However, R.C. 3.15, as discussed above, now requires, among other things, that a person serving as county coroner, whether by appointment or election, be a resident of the county at all times during his term of office.<sup>3</sup>

Your second question asks whether the county, if unable to fill the office of coroner by appointment, has authority to obtain the services of a coroner pursuant to contract. It is well established that the board of county commissioners is a creature of statute and may exercise only those powers granted by statute. *State ex rel. Shriver v. Bd. of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). No statute of which I am aware authorizes the board of county commissioners to contract for such services. Rather, the legislature has provided a statutory method for providing the services of a coroner, i.e., by election of a person with the professional qualifications set forth in R.C. 313.02 to serve a specific term in accordance with R.C. 313.01. Further, as discussed in answer to your first question, the legislature has provided in R.C. 305.02 for a vacancy in a county office, occurring through resignation of the current officeholder, to be filled by appointment. The statutory scheme for providing the services of county officers generally was discussed in *State ex rel. Pogue v. Groom*, 91 Ohio St. 1, 109 N.E. 477 (1914) (syllabus, paragraph four), where the court stated: "The general assembly has the authority to create new duties and require such duties to be performed by the incumbents of an existing office, but where the duties so created are in their nature and extent county official duties, they must be attached to a county office and must be required to be performed by a county officer duly elected by the electors of the county, or lawfully appointed to fill a vacancy in that office." Since the legislature has prescribed a statutory method for filling a vacancy in a county elected office by appointment and has not authorized the county commissioners to contract for the services of such officer, I must conclude that the board of county commissioners has no authority to contract for the services of a coroner where the office of coroner is vacant. In light of this conclusion, I find it unnecessary to address the remainder of your second question.

Your final question asks whether a person appointed to serve as deputy coroner may continue to act in that capacity after the resignation of the coroner by whom he was appointed. Pursuant to R.C. 313.05, the coroner may appoint assistant coroners, "who shall be licensed physicians of good standing in their profession, one of whom may be designated as the chief deputy coroner."<sup>4</sup> Specifically concerning the appointment of deputies, R.C. 3.06 states:

(A) A deputy, when duly qualified, may perform any duties of his principal. A deputy or clerk, appointed in pursuance of law, holds

<sup>3</sup> In 1988 Op. Att'y Gen.No. 88-057, I concluded in the syllabus that: "A county commissioner who was elected while he was a resident of the county may continue to serve as county commissioner after moving to an adjoining county within the state." The position of county commissioner is created as a county elective office under R.C. 305.01. Thus, R.C. 3.15 now requires a person serving as county commissioner, whether elected or appointed, to reside in the county in which he serves, with the exception set forth in section three (uncodified) of Am. Sub. S.B. 196. With respect to any person serving as county commissioner, who was not so serving on June 21, 1990, the effective date of Am. Sub. S.B. 196, I hereby overrule 1988 Op. Att'y Gen. No. 88-057.

<sup>4</sup> Pursuant to R.C. 313.05, as amended in Sub. H.B. 639, 118th Gen. A. (1990) (eff. Sept. 26, 1990), assistant coroners will be referred to as deputy coroners, one of whom may be designated as chief deputy coroner.

*the appointment only during the pleasure of the officer appointing him.* The principal may take from his deputy or clerk a bond, with sureties, conditioned as set forth in this section. The principal is answerable for the neglect or misconduct in office of his deputy or clerk. (Emphasis added.)

Pursuant to this statute, a deputy who is appointed pursuant to law "holds the appointment only during the pleasure of the officer appointing him." The meaning of this phrase, as used in a prior version of R.C. 3.06(A), was addressed in *Brady v. French*, 6 Ohio N.P. 122 (Super. Ct. Cincinnati 1898), where the court considered whether a deputy county treasurer could continue to serve in that capacity after the death in term of the county treasurer by whom he was appointed. The court stated: "[A]n officer can have no legal or official 'pleasure' after his term has expired, because with the expiration of his term of office he is *functus officio* and a private citizen. His appointments expire necessarily with the power which gave them life." 6 Ohio N.P. at 126. The court then concluded that the tenure of the deputy treasurer expired on the death of the treasurer who appointed him. See *State ex rel. Falconer v. Cooper*, 12 Ohio N.P. (n.s.) 659 (C.P. Hamilton County 1912) (interpreting the portion of G.C. 9 (predecessor of R.C. 3.06(A)), stating that appointees under that statute shall hold the appointment only during the pleasure of the appointing officer, to mean that an appointee can hold no longer than the expiration of the principal's term).

With respect to the situation you describe, I must conclude, therefore, that, pursuant to R.C. 3.06(A), a deputy coroner's appointment may not extend beyond the resignation of the coroner who appointed him. This conclusion makes it unnecessary for me to address the second part of your third question.

As a final matter, I note that R.C. 305.02(F) authorizes the board of county commissioners to "appoint a person to hold any of the offices named in division (A) of this section [including the office of coroner:] as an acting officer and to perform the duties thereof between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes office." The question then arises as to the requisite qualifications for serving as an "acting officer" appointed under R.C. 305.02(F).

R.C. 305.02(F) is silent as to the necessary qualifications to serve as an acting officer. The term "acting officer" is defined generally as a "[t]erm used to designate, not an appointed incumbent, but merely a *locum tenens*, who is performing the duties of an office to which he himself does not claim title." *Black's Law Dictionary* 25 (5th ed. 1979). Thus, an acting officer appointed under R.C. 305.02(F) does not claim title to the office in which he is serving in an "acting" capacity. Rather, he is merely designated to perform the duties of such office for a limited time, i.e., "between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes the office." R.C. 305.02(F). Thus, in the situation you describe, a person appointed as acting coroner need not possess all the qualifications which would be required if he sought appointment or election to such office, since he will not serve as such officer, but will only perform the duties of the office for a limited time.

I note, however, that since the acting coroner is required to perform the duties of the office of coroner, he must meet any professional requirements necessary to perform such duties. In *State v. Cousin*, 5 Ohio App. 3d 32, 34, 449 N.E.2d 32, 35 (Seneca County 1982), the court discussed certain aspects of the coroner's duties, as follows:

Under R.C. 313.02, certain professional training and qualification as a physician are the basic qualifications for the office. The coroner is charged with autopsies and making certain medical findings. Bodies are buried or cremated ultimately and examination immediately by a qualified expert is quite essential to make determination of the causes of death while the evidence is available. But this pertains to the medical or physiological cause of death and it is reasonably clear why this determination could be given a presumption of validity. This constitutes a medical opinion on a medical question. The evidence necessary to the determination is only available during a relatively short period, and the matter is peculiarly within the special area of expertise of the coroner.

It is clear, therefore, that the coroner's duties, at least in part, involve the practice of medicine. Thus, in order to avoid the prohibition of R.C. 4731.41 against the unauthorized practice of medicine, a person appointed temporarily to assume the duties of the coroner should be properly certified in accordance with R.C. Chapter 4731.

Based on the foregoing, it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 3.15, a person serving as county coroner, whether elected or appointed, must be a resident of the county in which he serves at all times during his term of office. (1988 Op. Att'y Gen. No. 88-057, overruled in part; 1968 Op. Att'y Gen. No. 68-072, syllabus, paragraph two, overruled.)
2. The board of county commissioners has no authority to provide pursuant to contract for the services of a coroner for the county.
3. Pursuant to R.C. 3.06, the tenure of a deputy coroner ends at the time of the resignation of the coroner by whom he was appointed; such deputy coroner may continue to act in that capacity, however, upon appointment by the coroner's successor.
4. Pursuant to R.C. 305.02(F), where the office of coroner is vacant, the board of county commissioners may appoint a person to serve as acting coroner and to perform the duties of the coroner between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes office; such acting coroner need not be a resident of the county he serves, but must be properly certified to practice medicine in accordance with R.C. Chapter 4731.