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TOWNSHIP TRUSTEE—VACANCY IN OFFICE—DEATH OF INCUMBENT AFTER RE-ELECTION AND BEFORE ENTERING INTO NEW TERM—§503.24 R.C.—AMENDMENT EFFECTIVE JAN. 1, 1958—FAILURE TO APPOINT FOR THE UNEXPIRED TERM OCCURRING UPON DEATH OF INCUMBENT AND ENDING JAN. 1, 1958.

SYLLABUS:

Where a vacancy in the office of township trustee occurred in December, 1957, by reason of the death of an incumbent who had been re-elected at the November 5, 1957, election for another term of office, and where such vacancy for the term ending December 31, 1957, was not filled by appointment under the provisions of then existing Section 503.24, Revised Code, the vacancy in the office for the full-term may be filled by the surviving members of the board of township trustees by appointment made within 30 days after January 1, 1958, as provided in Section 503.24, Revised Code, as amended effective January 1, 1958.

Columbus, Ohio, January 29, 1958

Hon. Roy J. Gilliland, Prosecuting Attorney
Jackson County, Jackson, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“At the November 5, 1957 election, one of the Trustees in one of the Townships in Jackson County was re-elected for another term of office. A few days ago he died and thereby left a vacancy on the Board of Township Trustees. The Township in which he was a member of the Board of Trustees is without a Justice of the Peace and therefore under Ohio Revised Code Section 503.24 before the section was amended, it would be the duty of the County Probate Judge to fill the vacancy on the Board. Paragraph one of Section 503.24 before it was amended, gave authority to the Township Trustees to fill vacancies in Township offices except Township Trustee. Paragraph one of Section 503.24 as amended does not contain this exception. My specific question is this: In the event of the death of a Township Trustee who has been re-elected to that position and when the death occurs prior to the date upon which the Trustee would assume his duties under his new term of office, do the two remaining members of the Board have the authority under Section 503.24 as

amended, to fill the vacancy created by the death of the re-elected Trustee?"

As I understand the facts in this case, there was no appointment during the calendar year 1957, to fill the unexpired term of office in which the deceased trustee was serving at the time of his death. On this point, I may say in passing, that if the probate judge had undertaken, under authority of the final paragraph of Section 503.24, Revised Code, to fill this vacancy during the calendar year 1957, for the unexpired term, then no vacancy with respect to the full-term would occur, the person so appointed continuing in office by virtue of Section 3.01, Revised Code. See *State, ex rel. Sheets v. Speidel*, 62 Ohio St., 156.

Assuming, therefore, that no interim appointment was made, and that we are now concerned solely with the filling of the presently existing vacancy on the board of trustees, your attention is invited to Section 503.24, Revised Code, as amended effective January 1, 1958, which reads in part as follows:

"If, by reason of the nonacceptance, death, or removal of a person chosen to an office in any township at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term.

"If a township is without a board or if no appointment is made within thirty days after the occurrence of a vacancy on the board, the county court of such county shall appoint suitable persons, having the qualifications of electors in the township, to fill such vacancies for the unexpired term. * * *"

It will be noted that in Section 503.24, Revised Code, prior to this amendment, it was provided that the board of township trustees might fill vacancies in any township office *except* that of the board of township trustees. This exception has been removed in the statute as recently amended, and it is clear that the power to fill vacancies in this office rests initially with the surviving members of the board.

There is, of course, in the second paragraph of this section a provision to the effect that this must be accomplished within 30 days from the occurrence of the vacancy on the board. The question is, therefore, on what date did the vacancy with which we are here concerned actually begin?

It is quite true that the vacancy for the unexpired term ending December 31, 1957, occurred on the date of the death of the incumbent. We

are not, however, concerned with that vacancy. Rather, we are concerned with the vacancy for the existing unexpired term, *i.e.*, the term which began on January 1, 1958. The vacancy, as to that term, must necessarily have occurred on the first day of such term, January 1, 1958, and it follows, therefore, that the authority of the trustees to fill the vacancy in question will continue for 30 days after such date. Accordingly, in specific answer to your inquiry, it is my opinion that where a vacancy in the office of township trustee occurred in December, 1957, by reason of the death of an incumbent who had been re-elected at the November 5, 1957, election for another term of office, and where such vacancy for the term ending December 31, 1957, was not filled by appointment under the provisions of then existing Section 503.24, Revised Code, the vacancy in the office for the full-term may be filled by the surviving members of the board of township trustees by appointment made within 30 days after January 1, 1958, as provided in Section 503.24, Revised Code, as amended effective January 1, 1958.

Respectfully,

WILLIAM SAXBE

Attorney General