

OPINION NO. 850**Syllabus:**

There is no authority in law for a special election to be held in a municipal corporation for the election of officers of a village where such village has abandoned one of the optional plans of municipal government authorized by Chapter 705, Revised Code, and has returned to the form of municipal government authorized by the general provisions of municipal corporation law.

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To: Forrest H. Bacon, Wyandot County Pros. Atty., Upper Sandusky, Ohio
By: William B. Saxbe, Attorney General, February 6, 1964

Your request for my opinion reads:

"I am writing at the request of the Village of Carey, Wyandot County, Ohio, relative to the authority of the municipal corporation to call a special election for the election of municipal officials.

"The village had operated under the so-called 'Manager' form of government and has now changed to the so-called 'Mayor-Council' form. There will be no regular municipal election until the year 1965.

"Your opinion is therefore requested as to the question if a municipal corporation has authority

to call a special election to fill vacancies in its public offices."

By Chapter 705, Revised Code, municipal corporations are authorized to adopt and organize under one of the optional plans of municipal government defined in that Chapter. Section 705.30, Revised Code, provides the method by which a municipal corporation which has adopted one of the optional statutory plans may abandon such plan and adopt another form of municipal government; after a petition signed by the required number of electors has been filed, a special election is held to determine whether there shall be a change in the form of government. That section then reads in part:

"If a majority of the votes cast at such special election are in favor of such proposition, the officers elected at the next succeeding regular municipal election shall be those prescribed by the sections of the Revised Code designated in the petition. Upon the qualification of such officers the municipal corporation shall be organized under such sections. Such change shall not affect the property, right, or ability of such municipal corporation, but shall extend merely to such change in its form of government."

From this language it is readily apparent that, if the electors of this village had authorized the adoption of another of the statutory forms of government as provided in Chapter 705, Revised Code, there will be no authority for a special election; the reorganization of the municipal government would not be completed until after the election of officers at the next succeeding regular election. Review of the pertinent statutes shows that, after the electors of a municipal corporation have authorized the adoption of one of the three optional forms of government, the officials are elected at the first municipal election after the adoption of such plan; these statutes do not authorize a special election.

In the situation you have described, however, the village has elected to abandon the option form of municipal government previously adopted and to return to its former status under the general provisions of law relating to the organization and government of municipalities. In Opinion No. 5983, Opinions of the Attorney General for 1955, page 621, your predecessor in office was advised that the Village of Carey could proceed under Section 705.30, Revised Code, to return to the general form of municipal government. The first branch of the syllabus reads:

"1. A municipality which has pursuant to Section 705.01, by vote of its electors, chosen to adopt one of the optional plans of municipal government set forth in Sections 705.41 to 705.86, inclusive, of the Revised Code, may after five years operation under such plan abandon such plan and return to its former status under the general provisions of law relating to the organization and government of municipalities; and in so abandoning the form of government so previously chosen, is not required to adopt one of the other optional plans of government set forth in the statutes aforesaid. The procedure for such abandonment may be taken as set forth in Section 705.30, Revised Code, but

the form of ballot should be modified so as to eliminate any reference to the adoption of one of such optional plans."

I find no statute which authorizes a village to initiate procedure for a special election to fill vacancies which occur in village offices. Section 3501.02, Revised Code, provides for the election of municipal officers; that section reads in part:

"General elections in the state and its political subdivisions shall be held as follows:

* * * * *

"(D) For municipal and township officers, members of boards of education, members of the state board of education, judges and clerks of police and municipal courts, in the odd-numbered years;"

The pertinent sections of Title 7 of the Revised Code provide for the filling of vacancies in the offices of municipal corporations. Section 733.25, Revised Code, reads:

"When the mayor is absent from the village, or is unable for any cause to perform his duties, the president pro tempore of the legislative authority shall be acting mayor. In case of the death, resignation, or removal of the mayor, such president pro tempore shall become the mayor and serve for the unexpired term."

A vacancy in the legislative authority of a municipal corporation is filled as provided by Section 731.43, Revised Code; that section reads:

"When the office of a member of the legislative authority of a municipal corporation becomes vacant, the vacancy shall be filled by election by the legislative authority for the unexpired term. If the legislative authority fails within thirty days to fill such vacancy, the mayor shall fill it by appointment."

I am in agreement with these statements which appear in Opinion No. 1364, Opinions of the Attorney General for 1950, page 28. This statement appears on page 29:

"I believe it is too well settled to admit of argument that an election may be held only when there is specific statutory authority therefor."

The following language is found at page 31:

"I am unable to find any provision of law which permits a special election to be held for a township trustee or a member of a board of education. You are therefore advised that Center Township is not entitled to hold a special election for such position."

It is, therefore, my opinion and you are advised that there is no authority in law for a special election to be held in a municipal corporation for the election of officers of a village where such village has abandoned one of the optional plans of municipal government authorized by Chapter 705, Revised Code, and has returned to the form of municipal government authorized by the general provisions of municipal corporation law.