

1067.

COUNTY TREASURER—RE-ELECTED—RESIGNS BEFORE EXPIRATION
OF FIRST TERM—TENURE OF OFFICE OF APPOINTEE—WHEN
SUCCESSOR ELECTED.

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.

COLUMBUS, OHIO, March 12, 1920.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Your letters of recent date concerning the tenure of office of Mr. Guy Marlatt who was appointed on November 3, 1919, to fill a vacancy in the office of county treasurer of Warren county, was duly received.

The facts as I understand them are as follows: At a general election in November 1916, Mr. Fred Sherwood was elected county treasurer for a term of two years, beginning on the first Monday in September, 1917. He was re-elected to the office at the general election in November, 1918, for the term beginning on the first Monday in September, 1919.

Mr. Sherwood formally resigned the office on November 25, 1918, which, it will be observed, was before the expiration of his first term and the beginning of the second term for which he had been elected, and on the same day Mr. J. O. Cartwright was appointed by the county commissioners to fill the vacancy.

Mr. Cartwright resigned the office on March 18, 1919, and on the same day Mr. Charles H. Young was appointed to fill the vacancy so created.

Mr. Sherwood having failed to give bond as provided in section 2633 G. C. on or before the first Monday in September, 1919 (the date of the commencement of the second term for which he had been elected at the general election in November, 1918), the county commissioners on the day following re-appointed Mr. Young to the office. Mr. Young continued to hold the office until November 3, 1919, and then resigned, and on the same day Mr. Guy Marlatt was appointed to fill the vacancy so created, and duly qualified for and assumed the duties of the office.

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 continue 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, where upon 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.

Brief reference to the statutory provisions pertinent to the subject will demonstrate the correctness of the foregoing conclusions.

Section 2632 G. C. provides that a county treasurer shall be elected biennially in each county, and hold office for two years from the first Monday in September next after his election.

Section 2633 G. C. provides that before entering upon the duties of his office the county treasurer shall give bond to the state in such sum as the commissioners direct, etc.

Section 2634 G. C. provides that if a person elected to the office of county treasurer fails to give bond, etc., as provided in the preceding section on or before the date of the commencement of his official term, the office shall become vacant.

Section 2636 G. C. provides that when the office of county treasurer becomes vacant by death, removal, resignation, neglect to give bond, or otherwise, the commissioners shall forthwith appoint a successor to fill the vacancy, and that the person so appointed shall give bond and take an oath as required by law.

Mr. Marlatt being appointee, and there being no special statutory or constitutional provision fixing the tenure of office of a person appointed to fill a vacancy in the office of county treasurer, his tenure of office must be determined by section 10 G. C. which applies to appointees generally. That section reads 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 such 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."

Before closing, your attention is called to *State vs. Baldwin* recently decided by the supreme court, but not yet released for publication in the law journals. In that case it appears that Baldwin had been elected to the first term as county treasurer at the general election in November, 1916, for the term of two years from the first Monday in September, 1917, to the first Monday in September, 1919. He duly qualified for the office and served for the full term. He was a candidate for re-election at the general election in November, 1918, but was defeated by one White, who was elected for the term of two years beginning on the first Monday in September, 1919. On November 19, 1918, following his election, White died without having qualified by giving bond and taking the oath of office. The court held that a vacancy existed in the office on the first Monday in September, 1919, which the county commissioners were authorized to fill, and that Baldwin not being an appointee, but a holdover official, was not entitled to hold the office until his successor was *elected* and qualified, but only until his successor was *appointed* and qualified. In other words, that section 10 G. C. was inapplicable to his case.

That case, however, has no special application to the situation in your county since Mr. Marlatt's right to hold the office of county treasurer is predicated upon the vacancy which occurred therein on November 3, 1919, by reason of the resignation of Mr. Young, and his appointment on that day to fill the vacancy so created, and being an appointee his tenure of office is governed by section 10 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.