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SHERIFF—WHEN PERSON ELECTED SHERIFF AT WHICH TIME OFFICE HELD BY PERSON DULY APPOINTED BY COUNTY COMMISSIONERS—ELECTED PERSON FAILED TO QUALIFY—PERSON APPOINTED AND HOLDING OFFICE ENTITLED TO CONTINUE AS SHERIFF UNTIL SUCCESSOR ELECTED AND QUALIFIED—GENERAL ELECTION, HELD: NEXT EVEN NUMBERED YEAR THEREAFTER—SECTION 10 G. C.

SYLLABUS:

When a person elected to the office of sheriff, which office at the time of his election is held by a person duly appointed thereto by the county commissioners, has failed to qualify for such office, the person so appointed and holding such office is entitled to hold the same under the provisions of Section 10 of the General Code, until the expiration of the unexpired term to which he was appointed and until his successor is elected and qualified, which successor must be elected at the general election to be held in the next even numbered year thereafter.

Columbus, Ohio, December 31, 1940.

Hon. Manning D. Webster, Prosecuting Attorney,
Pomeroy, Ohio.
Dear Sir:

This will acknowledge your request for my opinion, which reads as follows:

“On or about the 15th day of December, 1937, G. B. was appointed sheriff of this county by the Board of County Commissioners under section 2828 of the Ohio General Code, to fill a vacancy which was created by the resignation of the elected sheriff, the appointment being made for the unexpired term, which term ends on the first Monday of January, 1941.

At the general election held on November 5, 1940, D. W. was elected sheriff. However D. W. died on December 6, 1940, without having qualified for said office.

Does the death of D. W., sheriff-elect, prior to the time he has qualified, create a vacancy which would be filled, on the first Monday of January, 1941, by the county commissioners as provided in section 2828 of the Ohio General Code?

Does the death of the sheriff-elect, prior to the time he has qualified, create a vacancy by his failure to qualify for such office by filing a bond, etc. as provided in sections 2824 and 2827 of the Ohio General Code?

If not, would G. B., the present appointed sheriff, hold over until the next general election or for the full term of four years?"

Section 2828 of the General Code, which provides for the filling of a vacancy in the office of sheriff, reads in part as follows:

"When the office of sheriff becomes vacant, the county commissioners shall appoint a suitable person to fill the vacancy. The person so appointed shall give bond, take the oath of office prescribed for the sheriff, and hold the office during the unexpired term."

The above statute was under consideration by the Supreme Court of Ohio in the case of *State, ex rel. Haff, v. Pask, et al.*, 126 O. S. 633, wherein it was held:

"When there is a vacancy in the office of sheriff, and the county commissioners duly appoint a person for the unexpired part of such vacancy, the appointee is entitled to hold the office under Section 10, General Code, until the expiration of such unexpired term and until his successor is elected and qualified. (Paragraph 1 of the syllabus of *State, ex rel. Crawford, v. McGregor*, 44 Ohio St., 628, overruled.)"

The above case was decided on May 24, 1933, at which time section 10 of the General Code, referred to therein, read 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."

Since the above decision, this section was amended (117 O. L., page 346, effective August 11, 1937) by inserting immediately before the last sentence therein the following:

"When an elected candidate has failed to qualify for the office to which he has been elected, the office shall be filled as in the case

of a vacancy. Until so filled the incumbent officer shall continue to hold the office.”

In the instant case, D. W., the sheriff-elect, died without having qualified for the office to which he was elected. At first blush, the above amendment might seem to induce the conclusion that the office in question will become vacant at the expiration of the present term and that, by the language thereof, an appointment could be made as in the case of the original vacancy. To arrive at this conclusion, however, it is apparent that other parts of the statute would have to be disregarded. It is, of course, a fundamental rule of statutory construction that effect must be given to the statute as a whole and to the several parts thereof as well. In this connection, it is stated in 37 O. Jur., pages 606 to 610:

“An act under consideration should be construed in its entirety. That is to say, the entire act should be examined and considered, and considered as a whole. No provisions or part thereof can properly be disregarded in the construction of a statute. To the contrary, every part of the statute should be regarded in connection with the act of which it forms a part, so that all parts should be read together. The sense in which particular words, phrases, or clauses are used is to be ascertained from a view of the whole statute, rather than from isolated passages, except, perhaps, when such passages reach the entire subject-matter of the controversy.”

Obviously, the first sentence of this section, to wit, “when an elective office becomes vacant, and is filled by appointment, such appointee shall hold office until his successor is elected and qualified,” which is unchanged in its amended form, must be likewise considered. If a conflict exists between certain parts of a statute, an attempt, of course, should be made to harmonize and reconcile them. A construction of a statute which destroys its consistency is to be avoided at all times.

On this point, it is declared in 37 O. Jur., page 622:

“* * * The statute should, if possible, be so construed that its different parts are in harmony so as to render it a consistent and harmonious whole in subserviency to a common policy. These rules are based upon the presumption, or inference, that the legislature intended to be consistent and harmonious in the making of laws.”

As stated above, if the conclusion herein reached were to the effect that the office of sheriff in your county will become vacant on the first Monday in January of next year and that an appointment could then be made to fill

said vacancy, such conclusion would in fact render nugatory the language of the statute contained in the first sentence thereof and would be in disregard of the rules of construction above set forth.

Particular note should be given to the provision that "such appointee shall hold office until his successor is elected and qualified." In other words, the successor must be both elected and qualified to terminate the tenure of an appointee to an elective office.

In the light of this, I am constrained to the view that the amendatory language of Section 10, supra, can be applicable only to a case where the incumbent has been elected rather than appointed to the office which he occupies. In other words, if, for example in the instant case, G. B. were the sheriff by virtue of having been elected in 1936, his successor could be appointed in the manner provided in Section 2828, General Code, because of the death of D. W. and his resultant inability to qualify.

In reaching this conclusion, force is not only given to that part of Section 10, General Code, which was added at the time of the amendment, but also to the first sentence thereof, and in addition thereto would be consistent with the provisions of Sections 7 and 8, General Code, which are respectively as follows:

Section 7.

"A person elected or appointed to an office who is required by law to give a bond or security previous to the performance of the duties imposed on him by his office, who refuses or neglects to give such bond or furnish such security, within the time and in the manner prescribed by law, and in all respects to qualify himself for the performance of such duties, shall be deemed to have refused to accept the office to which he was elected or appointed, and such office shall be considered vacant and be filled as provided by law."

Section 8.

"A person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless otherwise provided in the constitution or laws."

It is significant to note that both of these sections contemplate persons "elected or appointed and qualified," whereas the first sentence of Section 10, supra, specifically provides that an appointee to a vacant elective office shall hold office until his successor is "elected and qualified."

In connection with the question here under consideration, reference

should be made to the case of *State, ex rel. Kopp, v. Blackburn*, 132 O. S., 421. While that case was decided on facts dissimilar to those in the instant case, nevertheless the court clearly recognized the distinction made in the statutes between a person elected to office and a person appointed to fill a vacancy in an elective office. In that case it was held:

“A person *elected* to the office of Clerk of the Court of Common Pleas continues to hold such office by virtue of Section 8, General Code, until his successor is *elected or appointed and qualified*, while a person *appointed* to fill a vacancy therein continues to hold such office by virtue of Section 10, General Code, until his successor is *elected and qualified*.”

I come now to the question of whether or not the incumbent G. B. shall hold over until the next general election, or for the full term of four years. In regard thereto, your attention is invited to the following language of Section 10, General Code:

“*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.” (Emphasis mine.)

The only provisions of law governing the appointment and term of office of an appointee to a vacancy in the office of sheriff are, as pointed out above, contained in Sections 2828 and 10 of the General Code.

The unexpired term to which G. B. was appointed will terminate on the first Monday of January, 1941. This date therefore marks the limit of time during which he can hold the office to which he was appointed under Section 2828, *supra*. On said date he will enter upon a new term. There is nothing contained in said statute which entitles him to hold office during the entire new term commencing on said date. As above stated, his holding over after said date is occasioned only by reason of the fact that his elected successor cannot qualify. It would therefore appear that after holding the office as provided by law, the provisions of Section 10, *supra*, last above quoted, in so far as the same are adaptable, must be applied. It is a well established principle that statutes should at all times be given a reasonable construction in conformity with their general purpose. Clearly the purpose of the provisions set out in Section 10, General Code, was to give the people the opportunity to choose at the earliest possible time the successor to an official they had previously chosen.

The sheriff is a county officer and under the provisions of Section

4785-4, General Code, general elections for county officers are held in the even numbered years. Therefore, in order to effectuate the object and purpose of the law, it must be concluded that the successor to G. B. is to be elected at the general election to be held in November, 1942.

In the case of State, ex rel. Harsha, v. Troxel, et al., 125 O. S., 235, the provisions of the statute here in question were under consideration by the court. In said case it was held:

“The successor of an appointee appointed to fill a vacancy in the office of county auditor, which vacancy occurred more than thirty days before the next general election at which county officers can be voted for, must be elected at the next general election for county officers.”

While Section 2562 of the General Code, which deals with the filling of a vacancy in the office of county auditor, merely provides that the county commissioners shall appoint a person to fill the vacancy without stating that the person so appointed shall “hold office during the unexpired term” as does Section 2828, supra, in the case of a vacancy in the office of sheriff, yet the reasoning contained therein is applicable in the instant case.

Before concluding, it is interesting to observe that the statutes pertinent to specific vacancies in the various county offices uniformly contain no provision governing the tenure of office of the appointee except in the case of the office of sheriff.

Summarizing my conclusions herein, it is therefore my opinion that when a person elected to the office of sheriff, which office at the time of his election is held by a person duly appointed thereto by the county commissioners, has failed to qualify for such office, the person so appointed and holding such office is entitled to hold the same under the provisions of Section 10 of the General Code, until the expiration of the unexpired term to which he was appointed and until his successor is elected and qualified, which successor must be elected at the general election to be held in the next even numbered year thereafter.

Respectfully,

THOMAS J. HERBERT,
Attorney General.