

558.

CLERK OF MUNICIPAL COURT, TOLEDO, OHIO—APPOINTMENT TO  
FILL VACANCY—ELECTION OF SUCCESSOR.

**SYLLABUS:**

*When because of a vacancy, an appointment was made to the office of the clerk of the municipal court of the city of Toledo during the early part of 1927, a successor to the appointee for such office shall be elected for the unexpired term at the November municipal election of 1927.*

COLUMBUS, OHIO, June 2, 1927.

HON. LEROY W. HUNT, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication requesting my opinion as follows:

“L. E. K. was elected clerk of the Municipal Court of the City of Toledo in November, 1925. He took office January 1, 1926, and served until his death, the early part of 1927. Mr. W. M. was appointed by the Judges of the Municipal Court to the office of Clerk to fill said vacancy.

The Board of Deputy State Supervisors of Elections has requested this office to advise them as to whether or not an election should be held at the coming municipal election for the purpose of electing a Clerk to fill out the short term.

Section 1579-316 provides that a vacancy in the office of Clerk of the Municipal Court shall be filled by the judges of said court by appointment until his successor is elected and qualified according to law.

The only provision for the election of a successor is found in 1579-313, which section was amended by the last legislature, and which, before and after amendment, provides that the first election of clerk shall be held at the regular municipal election in the year 1917, and every four years thereafter a successor shall be elected to fill that term.

We desire to submit to you for a ruling the question as to whether or not there will be a short term election for the office of clerk of municipal court at the municipal election of 1927. We are of the opinion that no such election is required by law.”

Section 1579-313, General Code, provides in part as follows:

“There shall be a clerk of the municipal court, who shall be nominated and elected for a term of four years, in the same manner as is now or may be provided by charter of the city of Toledo for the nomination and election of city officials. The first election of clerk shall be held at the regular municipal election in the year one thousand nine hundred and seventeen, and every four years thereafter a successor shall be elected for a like term. \* \* \* The term of office of the clerk shall commence on the first day of January next after his election and he shall hold office until his successor is elected and qualified. \* \* \*”

Section 1579-316, General Code, provides inter alia that:

“\* \* \* A vacancy in the office of clerk of the municipal court shall

be filled by the judges of said court, by appointment, until his successor is elected and qualified according to law."

Article XVII, section 2, of the Ohio Constitution, provides in part that:

"\* \* \* the term of office of all elective county, township, municipal and school officers shall be such even number of years not exceeding four (4) years as may be so prescribed. \* \* \*

All vacancies in other elective offices (other than state officers or members of the General Assembly) shall be filled for the unexpired term in such manner as may be prescribed by law."

Section 10, General Code, 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."

You will note that section 1579-316, supra, provides that a vacancy in the office of clerk of the municipal court of Toledo shall be filled by appointment and that the appointee shall hold the office until his successor is elected and qualified according to law. I have examined the statutes of Ohio and the charter of the City of Toledo, and I am unable to find any section containing provisions applicable to the election of a successor to an appointee for the office of clerk of the municipal court of Toledo other than the general provisions contained in section 10, supra. This section provides when and for what length of time such a successor to an office shall be elected and in the absence of any specific provision of law to the contrary it will govern in the instant case.

In Opinion No. 105 dated February 26, 1927, a copy of which I am herein enclosing, this department construed and interpreted section 10, supra.

Following the reasoning and the conclusions of the above opinion and applying that which is pertinent to the instant question, I am of the opinion that a successor to Mr. W. M. should be elected for the unexpired term at the November municipal election of 1927.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

559.

STATE BOARD OF HEALTH—SECTION 1241, GENERAL CODE, CONSTRUED  
—AUTHORITY TO MAKE AND ENFORCE REASONABLE RULES AND  
REGULATIONS FOR THE OPERATION OF STATE LABORATORY.

SYLLABUS:

1. *The state board of health, having under authority of section 1241, General Code, the power to establish and maintain a laboratory for the diagnosis of contagious and in-*