

are available for the payment of the compensation of a probation officer, the county commissioners may not be compelled to appropriate for the same, although an appointment to such position has been made.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4046.

VACANCY—BOARD OF EDUCATION—PERSON ELECTED DIES
BEFORE BEING QUALIFIED—SUCCESSOR ELECTED BY
BOARD AT FIRST MEETING THEREAFTER.

SYLLABUS:

1. *Where two persons are to be elected at large to membership on a board of education and one of the two successful candidates dies before he qualifies, neither of the incumbents whose term expires on the first Monday in January after said election has the right to hold over until the next general election at which members of boards of education are elected.*

2. *In such event, at the commencement of the term in January following said election, a vacancy exists which the board is authorized to fill, by election, at its first regular or special meeting, or as soon thereafter as possible.*

COLUMBUS, OHIO, February 8, 1932.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I am in receipt of your recent letter which reads as follows:

“The Board of Education of the Green Springs School District is composed of five members. The terms of two members of this Board expire the first Monday of January, 1932, so that the electors of the District voted in November, 1931, to fill these two places upon the Board. There were three candidates, one being one of the members whose term expired, who was running for re-election. The other member whose term expired, did not seek re-election.

At the election held in November, the two elected to the office did not include the one running for re-election. In other words, he was the low man of the three. Before he had an opportunity to qualify one of the successful candidates died. The question arose then as to whose place upon the Board the surviving successful candidate assumed. In other words, would the member of the Board who was running for re-election be defeated, hold over, and will he hold over until the next general election at which School Board members are chosen, and will the successful living candidate take the place of the member of the Board who did not seek re-election, or are both places upon the Board declared vacant, the successful candidate taking one of the places, and the Board then entitled to appoint someone to the other vacancy?

Section 4745 states that the term shall be for four years, and until the successor is elected and qualified. The successor in this instance was elected, but never qualified.”

Section 4745, General Code, provides as follows:

"The terms of office of members of each board of education shall begin on the first Monday in January after their election and each such officer shall hold his office for four years except as may be specifically provided in chapter 2 of this title (G. C. §§4698 to 4707), and until his successor is elected and qualified."

I am of the opinion that at the beginning of the new term in January, 1932, there was one vacancy on the board of education, referred to in your letter, which should be filled by said board, by election, at the next regular or special meeting, or as soon thereafter as possible, for two reasons:

First, the new term for which the person who died was elected cannot be considered as an appendage of either of the terms of the two places on the board which expired in January, 1932. *State, ex rel. Christensen vs. Larsen, et al*, 110 O. S. 413.

In the case of *State, ex rel. Hoyt vs. Metcalfe*, 80 O. S. 244, it was held that:

"The death of a person elected to an office before he qualifies does not create a vacancy where the constitution provides that an incumbent in an office shall hold for his term and until the election and qualification of a successor."

It was also held in that case that:

"The period between the expiration of his original term and the election and qualification of his successor is as much a part of the incumbent's term of office as the fixed statutory period."

The court also said:

"The capacity conferred upon an elective officer by said article to serve until a successor is elected and qualified attaches to and may be enjoyed by one appointed to succeed where the elected officer has resigned."

However, there being two places, the terms of which expired in January, this case can have no application. *State, ex rel. Christensen, vs. Larsen, et al, Supra*. In the Christensen case, there were thirteen candidates for the six places to be filled on the Council of Rocky River. Hutchinson, who, running for re-election, was one of the successful candidates, died soon after election. Christensen was appointed for the unexpired term. At the commencement of the new term, the council declared a vacancy and appointed Larsen. Christensen claimed the right to hold over. The court said:

"It is disclosed that the council of the village of Rocky River consisted of six members elected at large. At the election of the new council in November, 1923, there were thirteen candidates for the six places on the council, some of whom were candidates for re-election. None of those elected could be designated as the successor of a particular former member, consequently had Hutchinson lived he could not have been regarded as his own successor in the new term, and, therefore,

Christensen, by reason of his selection for the unexpired term of Hutchinson, could not hold over and become Hutchinson's successor in the new term. Under such circumstances the new term was not an appendage of the unexpired term, and the case of *State, ex rel Hoyt, vs. Metcalfe*, 80 Ohio St., 244, 88 N.E., 738, has no application."

In the case you present, the defeated candidate would have no greater right to hold over than would the other member whose term expired and who did not run for re-election. Since the new term to which the deceased person would have been entitled, had he not died, cannot be regarded as the appendage of either of the terms which expired in January, the provision of the statute giving a person the right to hold office until the successor is elected and qualified cannot apply.

Second, section 4748, General Code, provides as follows:

"A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the board not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy."

It will be seen therefore that, while section 4745, General Code, provides for the holding of office until a successor is elected and qualified, the above statute designates the failure to qualify within ten days after the organization of the board or of appointment as one of the causes of a vacancy.

In the case of *State, ex rel. Spaulding vs. Baldwin*, 101 O. S. 65, White was elected county treasurer and died before giving bond, whereupon the commissioners after the expiration of the old term appointed another to the office. The incumbent of the old term claimed the right to hold over. The court, after referring to sections 2634 and 2636, General Code, providing that if a person elected to that office fails to give bond as required, his office shall become vacant, and that in such event the commissioners shall appoint a suitable person to fill such vacancy, said:

"This language is unequivocal. White was elected to the office of county treasurer and failed to give bond. The law declared that thereby a vacancy occurred, and provided in the following section how it should be filled. When the county commissioners therefore appointed the relator to the office, after the death of White without his giving bond, they acted clearly within their official functions and the appointment was valid."

The law laid down in this case was followed in the case of *State, ex rel. Christensen vs. Larsen, et al., supra*. Referring to the action of the council in

declaring a vacancy and making an appointment to fill the vacancy, the court said:

"The action taken at that time by council was authorized by the provisions of Section 4242, General Code, which provides that council may declare vacant the office of any person elected or appointed to an office who fails to qualify therefor within the time required by law and the election of Larsen to fill the vacancy was authorized by Section 4236, General Code."

I am of the opinion therefore that, at the commencement of the term beginning in January, 1932, a vacancy occurred under the provisions of section 4748, General Code, and the board is authorized to fill such vacancy.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4047.

SCHOOL PROPERTY—BUILDING NO LONGER NEEDED MAY BE SOLD AT PRIVATE SALE WHEN VALUE \$300 OR LESS—CONVEYANCE OF LAND FOR SCHOOL PURPOSES—REVERTS TO HEIR OF ORIGINAL GRANTOR WHEN.

SYLLABUS:

1. *School buildings which are no longer needed for school purposes, and which do not exceed in value the sum of \$300.00 may be sold either at private sale or by public auction to the highest bidder without giving the statutory notice required by Section 4756, General Code, for sales of property exceeding in value the sum of \$300.00.*

2. *A conveyance of lands to school directors given without valuable consideration, and, as stated in the instrument of conveyance, "for divers good and charitable purposes and in pursuance of a legislative act for the encouragement of schools passed A. D. 1827" and which recites in its granting clause that it gives and grants as a donation for school purposes certain property therein described, is equivalent to a dedication for a specific use and does not confer power of alienation so as to extinguish that use; upon abandonment of the property for school purposes it reverts to the heirs of the original grantors.*

COLUMBUS, OHIO, February 8, 1932.

HON. WILLARD D. CAMPBELL, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"One of our Boards of Education of a consolidated district composed of most of two townships and a village, desire to dispose of the now unnecessary sub-district school properties, some ten or twelve in number. Upon examination of the several titles, and the rights of the