

a vacancy in the office of a county auditor. However, this opinion refers to many opinions construing the constitutional provisions and statutes relative to the time of holding elections to fill vacancies generally.

Without undertaking to set out the said 1927 opinion at length, it is believed sufficient to state that it properly points out that Section 10, of the General Code, in referring to "the first general election for the office which is vacant that occurs more than thirty days after the vacancy shall have occurred" has reference to elections held in the even numbered years and in the odd numbered years. That is to say, unless it is otherwise provided by law, the intent of the language of Section 10, General Code, means that a vacancy in an office shall be filled at the first general election that is to be held for the office that is vacant.

Without further discussion, it may be stated that the courts have pointed out that Section 4, of Article XIII, of the Constitution, which relates to "annual election" must be construed in connection with Article XVII, of the same instrument, and therefore vacancies in judicial offices shall be filled at general elections in even numbered years, unless otherwise provided by law. In the case of a probate judge, there is no specific statutory provision relative to the time of election to fill a vacancy, and therefore we must turn to the provisions of Section 10, of the General Code, and the constitutional provisions hereinbefore mentioned.

In view of the foregoing, it is my opinion that where a vacancy occurred in the office of probate judge on March 7, 1929, an election should be held to fill the unexpired term at the November election in 1930.

Respectfully,
GILBERT BETTMAN,
Attorney General.

299.

COUNTY MEMORIAL BUILDINGS—CONSTRUCTED PRIOR TO AMENDMENT OF SECTION 3068, GENERAL CODE, IN 109 OHIO LAWS—UNDER JURISDICTION OF COUNTY COMMISSIONERS.

SYLLABUS:

County memorial buildings constructed, equipped or decorated prior to the amendment of Section 3068 in 109 Ohio Laws, continue to be under the jurisdiction of the county commissioners as provided in Section 3068 prior to such amendment.

COLUMBUS, OHIO, April 13, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication, which reads as follows:

"We respectfully request you to furnish this department your written opinion on the following:

Under an act of the General Assembly, passed March 12, 1902, 95 O. L. 41, memorial buildings were constructed. Under Section 10 of this act, such memorial buildings were under the jurisdiction of the county commissioners. This act was carried into the code as Section 3059 et seq., and in 109 O. L. 284, several of the sections were amended so as to provide for the appointment by the Court of Common Pleas of a board of trustees for the operation of memorial buildings.

QUESTION: When such memorial buildings were constructed prior to the amendment in 109 Ohio Laws, should such buildings continue to be under the jurisdiction of the county commissioners or upon the enactment of the amendment in 109 Ohio Laws should a board of trustees be appointed by the Court of Common Pleas as provided in the amendment?"

Prior to the amendment of Section 3059, et seq., General Code, 109 O. L., p. 284, Section 3068 read as follows:

"Upon completion of the memorial building the trustees shall turn it over to the county commissioners, who shall provide for the maintenance, equipment, decoration and furnishing thereof, not to exceed the sum of twenty-five thousand dollars in the same manner as they are authorized to care for and maintain other property of the county. The board of commissioners of the county, in addition to all other levies authorized by law, shall levy an annual tax in the year 1910 and annually thereafter to care for such building, and to make such improvements thereof as are necessary to carry out the purposes for which it was constructed. They may permit the occupancy and use of the memorial building, or any part thereof, upon such terms as they deem proper."

This section was amended so that it now reads as follows:

"Upon the completion, equipping and furnishing of the memorial building, the trustees shall transfer the same to the county, and the title of such site and building shall thereupon vest in the county and the tenure of office of said trustees shall terminate and end and said board of trustees shall cease to exist as an official board, and thereupon the Court of Common Pleas shall appoint a board of permanent trustees or if the said memorial building is to be used as a public library, may designate any board of public library trustees within the county as a board of permanent trustees ex-officio who shall have sole control, management and supervision of such memorial building and grounds under such rules and regulations as they may from time to time adopt, subject to the approval of the court. Such board of permanent trustees unless it consists of a board of library trustees shall be composed of three members who shall be appointed by the Court of Common Pleas, one for two years, one for four years and one for six years, and at the expiration of their terms their successors shall be appointed in the same manner for terms of six years each. Such memorial building shall be for the use of the general public, military organizations to be given the preference."

It will be observed that before the section was amended it was the duty of the trustees of the memorial building to turn over the building to the county commissioners, whose duty it was to provide for the maintenance, equipment, decoration and furnishing of it, and it further provided that the county commissioners could permit the occupancy or use of the memorial building, or any part thereof, upon such terms as they deemed proper. By the amendment, on completion of the memorial building by the trustees, it was to be turned over to the county and then the Court of Common Pleas was authorized to appoint a board of permanent trustees, who were given sole control of the management and supervision of such memorial building.

Section 2 of the act passed April 26, 1921, expressly repealed Section 3068 of the former act. There is no question that the Legislature had authority to enact the law depriving the county commissioners of control and management of the county me-

morial building, as the commissioners had no vested right in such control and management. Since the original act was repealed, the question arises whether or not Section 3068, as amended April 26, 1921, applies to memorial buildings that had been erected, fully equipped, furnished and decorated and transferred to the county commissioners prior to the enactment of the act of April 26, 1921. To answer this question we must first consider whether or not Section 3068, as amended, is a substitute for the original Section 3068. It will be observed that the original act provided a complete plan for the erection of a county memorial building, which was different in many respects from the act of April 26, 1921. The act of April 26, 1921, provided for the erection of memorial buildings as if no prior act ever existed. The act provided for county memorial buildings that were to be erected in the future. There is no reference in the act to buildings in the course of erection or those that had been erected. It is only by the greatest stretch of the imagination that it could be said that the act itself shows an inclination on the part of the Legislature to offer the amendment as a substitute for the original section. It may be urged that the repeal of the section shows the intent of the Legislature to offer the amendment as a substitute. I do not believe this is so. The Legislature intended to offer a new plan in its entirety; a complete substitute for the old plan but not a substitute for each particular section separately. The Legislature seems to have recognized this fact, for on July 6, 1925, it enacted Section 3068-2, which provides in substance that where a county memorial building has been erected or in course of erection, *but has not been equipped or decorated*, the board of trustees, as appointed by the governor, shall continue to act *for the purpose of equipping, furnishing and decorating the building*, and it further provides that the building should then be turned over to the county and a permanent board of trustees be appointed in accordance with Section 3068, as amended on April 26, 1921. If the Legislature intended that Section 3068, as amended, be substituted for the original section, then this enactment would have been wholly unnecessary. My conclusion is that the Legislature did not intend that Section 3068, as amended, should be substituted for the original section. The Legislature having repealed the original section and failing to provide a substitute, the question arises as to whether original Section 3068 is still in effect in so far as it affects county memorial buildings that had been erected, furnished and equipped prior to the act of April 26, 1921. It is apparent in this case that the Legislature would not have repealed Section 3068 without providing a substitute therefor. The Legislature having failed to provide a substitute for Section 3068, in so far as it applies to memorial buildings erected and equipped prior to the act of April 26, 1921, I am of the opinion that the provisions of Section 3068, prior to the amendment of April 26, 1921, are still in full force and effect as pertaining to county memorial buildings erected and equipped prior to the act of April 26, 1921.

In the case of *State ex rel McGannon vs. Sayre, Auditor*, 12 N. P. (n. s.) p. 13, the syllabus reads:

"Section 2915-1 of the General Code, providing for the appointment of a secret service officer by the prosecuting attorney, is inoperative and void for the reason that it is impossible to determine what judge or officer is designated by the statute to fix the compensation of such appointee; and inasmuch as it cannot be supposed the Legislature would have repealed the existing act providing for the appointment of such an officer without providing a substitute therefor, and these acts so far as the attempted amendment, supplement or repeal are concerned relate to a single subject, Section 1541 remains in force."

Answering your specific inquiry, I am of the opinion that county memorial build-

ings constructed, equipped and decorated prior to the amendment of Section 3068 in 109 Ohio Laws, continue to be under the jurisdiction of the county commissioners as provided in Section 3068 prior to such amendment.

Respectfully,
GILBERT BETTMAN,
Attorney General.

300.

VEHICLE—STOPPING ON A ROAD OR HIGHWAY—SECTION 6310-27,
GENERAL CODE, CONSTRUED.

SYLLABUS:

The stopping of a vehicle on a road or highway with front and rear right wheels within one foot of the right hand side of the improved portion of the road may be a violation of Section 6310-27, General Code, if the vehicle stopped in this manner obstructs free passage of the highway. Whether or not such stopping obstructs the free passage of the highway depends upon the surrounding circumstances in each particular case.

COLUMBUS, OHIO, April 13, 1929.

HON. J. CARL MARSHALL, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—I am in receipt of your communication of March 1st, 1929, copy of which is as follows:

“Mr. Ohmer Tate, sheriff of Greene County, Ohio, requested an opinion of me as to the meaning of Section 6310-27 of the General Code which is as follows:

‘No vehicle shall stop on any road or highway except with front and rear right wheels within one foot of the right hand side of the improved portion of the road, nor in any such way as to obstruct a free passage of the road; provided that nothing in this section shall be held to apply whenever a driver of a vehicle is compelled or permitted to stop by reason of other lawful regulations or emergencies.’

The portion in particular in which he wanted to know the meaning is from the beginning of the section to the word road in the fifth line. My opinion to him was that a person could lawfully stop his machine on the right side of the highway with the front and rear right wheels one foot in from the right hand side of the improved portion.”

In your communication you request an opinion from me as to the meaning of the following part of Section 6310-27, General Code:

“No vehicle shall stop on any road or highway except with front and rear right wheels within one foot of the right hand side of the improved portion of the road.”

In order to determine the meaning of the portion of the section to which you refer, it is necessary to consider it together with the language that immediately follows, viz: “nor in any such way as to obstruct free passage of the road;”. It appears to me that “in any such way” refers to that portion of the statute which reads: “with front