

2188.

## TERM OF OFFICE OF JUSTICE OF THE PEACE.

## SYLLABUS:

*A justice of the peace elected to serve a term of four years, and to whom no successor has been chosen who has qualified for such office, may not legally continue to serve as such justice of the peace.*

COLUMBUS, OHIO, January 31, 1925.

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

GENTLEMEN:—I am in receipt of your communication as follows:

“A justice of the peace was elected in 1916 and served for four years; in 1920 and in 1924, a justice was elected to serve in his place, but each time failed to qualify.

“May the justice of the peace elected in 1916 legally continue to serve as such justice of the peace?”

Section 2 of article 17 of the Constitution of Ohio, provides in part:

“The term of office of justices of the peace shall be such even numbers of years not exceeding four, as may be prescribed by the General Assembly.”

Section 1713, General Code of Ohio, in part provides:

“All justices of the peace shall be elected for a term of four years.”

It will be noted that neither in the section of the Constitution relating to election of justices of the peace nor in the section of the General Code, is there any provision for a justice of the peace continuing in office until his successor is elected or appointed and qualified. The section of the General Code 1713, providing for the term of office, has specified that the same shall be four years, and this is the maximum term permitted under the Constitution.

Section 8 of the General Code, provides:

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

This section is a general section and is applicable to all general statutes fixing the term of office, excepting such terms as are limited by the Constitution, or cases in which there is other provision, either in the Constitution or the statutes, to fill an apparent vacancy caused by the expiration of the preceding term. However, such section will not affect the term of a justice of the peace.

In the case of *State ex rel Attorney-General vs. Brewster*, 44 O. S., 589, it was held:

“Where the term of office is fixed and limited by the constitution, there is no power in the general assembly to extend the term or tenure of such office beyond the time so limited.”

In addition to the inhibition of the constitution against a longer term than four

years for a justice of the peace, the creation of a vacancy by the refusal of a person elected to serve is taken care of by sections 1714 and 1715, General Code of Ohio, which provide:

*"Section 1714:* If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the trustees within ten days from receiving notice thereof, by a majority vote, shall appoint a qualified resident of the township to fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of the courts of such vacancy and the date when it occurred."

*"Section 1715:* At the next regular election for such office, a justice of the peace shall be elected in the manner provided by law, for the term of four years commencing on the first day of January next following his election."

It is believed that the proper procedure in the case you mention in your communication is for the township trustees to fill the vacancy caused by the refusal to serve.

You are therefore advised that a justice of the peace elected to serve a term of four years, and to whom no successor has been chosen who has qualified for such office, may not legally continue to serve as such justice of the peace.

Respectfully,  
C. C. CRABBE,  
*Attorney-General.*

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2189.

APPROVAL, BONDS OF HARTFORD TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY.

COLUMBUS, OHIO, January 30, 1925.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2190.

APPROVAL, BONDS OF VILLAGE OF BEDFORD, CUYAHOGA COUNTY, \$118,000.00.

COLUMBUS, OHIO, January 31, 1925.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*