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VACANCY—OFFICES OF TOWNSHIP TRUSTEE AND JUSTICE OF THE PEACE IN SAME TOWNSHIP—HOW FILLED—QUORUM TO TRANSACT TRUSTEES' BUSINESS.

*SYLLABUS:*

1. *Under the provisions of Section 3262, General Code, a vacancy in the board of trustees of a township may be filled only by a justice of the peace of the township or, if a Municipal Court has superseded the justice of the peace, by the Municipal Court.*

2. *Where there is no justice of the peace or Municipal Court in a township, and there is a vacancy in the board of township trustees, the remaining trustees may appoint a justice of the peace. The newly appointed justice of the peace, after qualifying, may then fill the vacancy in the board of township trustees.*

3. *Where there is a vacancy in the board of township trustees, two trustees constitute a quorum to transact such business as does not expressly require unanimous vote.*

COLUMBUS, OHIO, September 19, 1929.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“I submit the following inquiries for your opinion:

One of the township trustees of Jackson Township, Pickaway County, Ohio, died, leaving a vacancy to be filled in said office; the justice of the peace of said township has also died. Who is to appoint the township trustees to fill the vacancy existing there, and who is to appoint the justice of the peace to fill that vacancy?

May the remaining members of the board of township trustees, being two in number, transact business and carry on the duties of said board of trustees?”

The township trustees are provided for by the terms of Section 3268 of the General Code, which reads as follows:

“Three trustees shall be elected, biennially, in each township, who shall hold their office for a term of two years, commencing on the first day of January next after their election.”

Section 3262, General Code, as amended in 113 O. L., is the only section contained therein, providing for the filling of vacancies in a board of township trustees. It reads:

“When for any cause a township is without a board of trustees or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, shall appoint a suitable person or persons, having the qualifications of electors in the township to fill such vacancy or vacancies for the unexpired term. Wherever in any township a Municipal Court shall replace and supersede the justices of the peace, the municipal judge or the presiding municipal judge, if there be more than one, shall have the same powers to fill vacancies on the board of trustees.”

You state in your communication, however, that "the" justice of the peace of this township is dead, indicating that there is now no justice of the peace in said township. Until there is a justice of the peace in the township, therefore, a vacancy in the board of township trustees of such township cannot be filled, as this department has heretofore held. (See opinions of the Attorney General for 1913, Volume 2, page 1420; also 1927, Volume 1, page 23.)

Coming now to your second question, it is clear that the board of township trustees of Jackson Township, notwithstanding the fact that one of its members has died, has the power to appoint a qualified resident of the township to the office of justice of the peace. Indeed, by the terms of Section 1714, General Code, it is the positive duty of the board of township trustees to appoint a suitable person to the office of justice of the peace, providing one who will serve, is found. Section 1714, General Code, reads:

"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."

Before such appointed justice of the peace can exercise any of the powers of his office, he must, of course, receive from the Governor of the State of Ohio a commission to fill such office, as provided in Section 138 of the General Code. Thereafter, said duly appointed justice of the peace could by appointment, fill the vacancy in the board of trustees.

Coming now to your third question, viz., whether the remaining two members of the board of trustees can function until the third is appointed: The rule is that unless otherwise provided, a majority of the board of township trustees shall constitute a quorum to transact business. (*State vs. Wilkesville Tp.*, 20 O. S., 288).

Specifically answering your questions, it is my opinion that:

First, the vacancy in the board of township trustees of Jackson Township, Pickaway County, Ohio, can be filled only through appointment by a justice of the peace of the township.

Second, the vacancy in the office of justice of the peace must be filled by the two remaining township trustees, and said justice of the peace, after properly qualifying, will have the power to fill the vacancy in the board of township trustees.

Third, a majority of the board of township trustees may transact such business as does not expressly require unanimous vote.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*