

The other deed above referred to is a quit claim deed, executed by Charles W. Isaly and Bertha Isaly, his wife, who, as above noted, are the beneficiaries of the trust upon and by which said Walter E. Isaly owns and holds said property as trustee. Upon examination of this deed, I find that the same has been properly executed and acknowledged by said Charles W. Isaly and Bertha Isaly, and that the same, as to form, is sufficient to convey to the State of Ohio all of the right, title and interest of said grantors in and to this property.

Said deeds, and each of them, are accordingly hereby approved.

Upon examination of Encumbrance Estimate No. 625, covering the purchase of the property here in question, I find that the same has been properly executed and that there is shown by the provisions thereof that there are sufficient balances in the proper appropriation account to pay the purchase price of this property, amounting to \$25,548.00, and said Encumbrance Estimate is hereby approved.

I am herewith returning to you the abstract of title relating to this property, the respective deeds of Walter E. Isaly, Trustee, and of Charles W. Isaly and Bertha Isaly, above referred to, and said Encumbrance Estimate No. 625.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1972.

VACANCY—OFFICE OF COUNTY SURVEYOR—LENGTH OF TERM OF APPOINTEE.

SYLLABUS:

A county surveyor who has been appointed under the provisions of Section 2785, General Code, to fill a vacancy in the office of county surveyor should now continue in office under such appointment until the general election for the office of county surveyor to be held in November, 1932, at which time a successor should be elected to fill the remaining unexpired term between the date of the November, 1932, election and the first Monday in January, 1933.

COLUMBUS, OHIO, June 12, 1930.

HON. RAYMOND B. BENNETT, *Prosecuting Attorney, Medina, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“By virtue of G. C. 2782, the term of the county surveyor was made to be four years. By virtue of G. C. 2785 when a vacancy occurs in the office, the county commissioners are empowered to appoint a county surveyor. The question which has arisen in this county is as follows: Does the person so appointed fill the unexpired term or serve until the next general election?

G. C. 2785 seems to imply, the following words having been used, ‘upon giving bond and taking the oath of office as required of the county surveyor elect,’ that the appointee fills the unexpired term; however, G. C. 10 contains the following sentence: ‘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 which has occurred,’ indicates differently.”

Section 2782, General Code, provides:

"There shall be elected in each county, at the regular election in 1924, a county surveyor, who shall assume office on the first Monday of September next after his election and who shall hold said office for a period of three years and four months or until the first Monday of January, 1929. There shall be elected in each county, at the regular election in 1928, and quadrennially thereafter, a county surveyor who shall assume office on the first Monday in January next after his election and so shall hold office for a period of four years."

It is apparent that the next general election for the office of county surveyor will be the November election for the year 1932.

Section 2785, General Code, is the section under which I assume the vacancy occasioned by the resignation of the county surveyor was filled. It provides:

"If a vacancy occurs in the office of county surveyor because of death, resignation or otherwise, the county commissioners shall appoint a suitable person county surveyor, who, upon giving bond and taking the oath of office as required of the county surveyor elect, shall enter upon the discharge of the duties of the office."

Since this section makes no provision for the tenure of office of the appointee, the general law on the subject is applicable as contained in Section 10, General Code. This section provides 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."

A situation exactly parallel to the one which you present was under consideration in Opinion No. 1777, rendered under date of April 14, 1930, to Hon. R. D. Williams, Prosecuting Attorney, Athens, Ohio. In that opinion the question was whether or not a clerk of the Court of Common Pleas should be elected in Athens County at the November, 1930, election to fill an unexpired term occasioned by the death of the clerk heretofore elected. The clerk had been appointed under a statute similar to Section 2785, supra, which made no provision as to the tenure of office of the appointee and, as in the case here under consideration, there is no general election in the year 1930 for the office of clerk of the Court of Common Pleas. The opinion held that the appointee should continue to hold office until the first general election for that particular office, being the November, 1932, election, as provided in Section 2867, General Code, at which time a clerk of the Court of Common Pleas should be elected for the remainder of the unexpired term between the November, 1932, election, and the first Monday in January, 1933. It was also held that at the November, 1932, election, a Clerk of Courts should be elected to take office for the regular term on the first Monday in January, 1933. The syllabus of this opinion is as follows:

"When a clerk of courts, who has been re-elected for another term, dies shortly before the time for the beginning of his new term, and the county

commissioners, acting under the terms of Section 2870, General Code, have made a temporary appointment to fill the vacancy in the old term and a re-appointment to fill the vacancy in the new term, the appointee continues in office until a successor, who is elected at the first general election for that particular office, has qualified for the unexpired term."

In view of the foregoing, it is my opinion that a county surveyor who has been appointed under the provisions of Section 2785, General Code, to fill a vacancy in the office of county surveyor should now continue in office under such appointment until the general election for the office of county surveyor to be held in November, 1932, at which time a successor should be elected to fill the remaining unexpired term between the date of the November, 1932, election and the first Monday in January, 1933.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1973.

CANDIDATE—PROSECUTING ATTORNEY—NOT ELIGIBLE UNLESS AN ATTORNEY AT TIME OF EXECUTING DECLARATION OF CANDIDACY PRIOR TO CIRCULATING HIS PETITION.

SYLLABUS:

Undr provisions of Section 2910, General Code, a person is not eligible as a candidate for the office of prosecuting attorney who has not been admitted to practice law in Ohio, at the time of executing his declaration of candidacy prior to circulating his petition as required in Sections 4785-70, 4785-71 and 4785-72, General Code.

COLUMBUS, OHIO, June 12, 1930.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

"I request your opinion on the following proposition: Under Section 2910, G. C., is a person eligible as a candidate for the office of prosecuting attorney who has not been admitted to the bar of this state at the time of filing his Declaration of Candidacy, but expects to take the bar examination in July, 1930? .Could a person under the above circumstances be nominated at the Primary to be held August 5, 1930, before he is duly licensed to practice law in this state?"

The portion of Section 2910, General Code, relative to your inquiries, reads as follows:

"No person shall be eligible as a candidate for the office of prosecuting attorney, or be elected thereto, who is not an attorney and counsellor at law, duly licensed to practice in this state. * * * "

Before undertaking a consideration of your questions, I might say that I have been informed that the coming bar examination will be held on the dates of July 15, 16, and 17, 1930. Past examinations have shown that it has taken some time for the