

"2. When one who is holding the office of sheriff, and is a candidate for election to succeed himself, dies before entering upon the new term, a vacancy is thereby created in the term in which he was serving, but not in the term for which he was a candidate and upon which he had not entered; and one who is duly appointed and qualified to fill the vacancy thus created will hold the office for and during the unexpired term of his predecessor, and until his successor is elected and qualified; and such election must be had at the first proper election that is held more than thirty days after the occurrence of the vacancy."

At the time said case was decided there was a statute declaring a vacancy in the event that the candidate elected for the office of sheriff failed to qualify. However, no mention was made of this statute by the court in its opinion deciding the case. It is noted, however, that the court in its opinion in the Baldwin Case, *supra*, distinguished the facts therein considered from the facts in the Speidel Case, *supra*, in the following language:

" \* \* \* In the Speidel case, *supra*, while a similar statute existed relating to the office of sheriff (Section 2827, General Code), it is not mentioned in the opinion, probably for the reason that Buvinger had died before the close of the polls and therefore the statute was inapplicable. \* \* \*"

The two cases last mentioned construed together are authority for the conclusion that the statutes declaring a vacancy where the elected candidate fails to qualify do not contemplate a case where the candidate dies before election.

From the foregoing it is believed to be clear that Section 8, General Code, does apply to the present incumbent of the office of county surveyor in your county, excepting as said section is modified by the constitutional limitation as to the length of term. As pointed out in the former opinion, found in the Opinions of the Attorney General for 1928, page 1137, hereinbefore referred to, when and if the holdover period of the present incumbent added to his present term for which he was elected exceeds four years there will of necessity be a vacancy. Such a vacancy may be filled by the county commissioners under the provisions of Section 2875, General Code. It may be further pointed out that it will be necessary to provide for the election of a county surveyor at the next regular election held for the election of county officers.

Based upon the foregoing, you are specifically advised that:

1. Where a candidate for county surveyor dies before election day on a day too late for a substitution to be made by the central committee and a majority of the electors cast their ballot for the deceased candidate, the opponent under such circumstances cannot be declared elected.

2. Under such circumstances the present incumbent will hold over under the provisions of Section 8 of the General Code until his successor is elected or appointed and qualified, providing the total tenure under his election shall not exceed four years.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2861.

INSURANCE—HOTEL GUESTS INSURED AGAINST ACCIDENT UNDER  
BLANKET POLICY ISSUED TO HOTEL—RESIDENT AGENT OF  
HOTEL MUST BE LICENSED AS INSURANCE AGENT.

*SYLLABUS:*

*Under the provisions of Section 644, General Code of Ohio, some agent in the hotel which issues to a guest at the time of his registration as such guest an identification card or certificate notifying the guest that he is thereby insured against all liability arising from accidental bodily injuries, death or disability while a guest at such hotel, is required to be duly licensed as an insurance agent in Ohio.*

COLUMBUS, OHIO, November 10, 1928.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Herewith I hand you copy of a contract entered into between the Gem City Life Insurance Company, of Dayton, Ohio, and the Associated Hotels Protective Association, of the same city.

This contract provides for the operation of an insurance plan in that a group of hotel owners, called the Associated Hotels Protective Association, proposed to purchase a blanket insurance policy protecting hotel guests. The plan calls for the issuance by a duly authorized insurance company of a master policy to the Associated Hotels Protective Association, the members of which are supplied with identification cards by the insurer. A card is given to a hotel guest upon his registration, and this card sets forth that the hotel is provided with a master accident policy, the advantages of which are extended to the guest during his residence. No charge is made to the guest, the premium on the policy being paid by the Associated Hotels Protective Association, which, in turn, pro-rates the same among its members.

We respectfully request your opinion as to whether a hotel manager or hotel clerk who issues the identification card to a guest and informs him of the offered benefits is an agent within the meaning of Section 644 or Section 654, of the General Code of Ohio.

We await your opinion at your convenience, and thank you in anticipation thereof.”

Section 644, General Code of Ohio, provides as follows:

“No person shall procure, receive, or forward applications for insurance unless a resident of this state and duly licensed by the Superintendent of Insurance. Upon written notice by an insurance company authorized to transact business in this state of its appointment of a person to act as its agent the Superintendent of Insurance shall, if he is satisfied that the appointee is a suitable person, and intends to hold himself out in good faith as an insurance agent, issue to him a license which shall state, in substance, that the company is authorized to do business in this state, and that the person named therein is the constituted agent of the company in this state for the transaction of such business as it is authorized to transact therein. Such notice shall be upon a form furnished by the Superintendent of Insurance and shall be accompanied by a statement under oath by the appointee which shall give his name, age, residence, present occupation, his occupation for the five years next preceding the date of the notice, and such other information, if any, as the Superintendent of Insurance may require, upon a blank furnished by him. The Superintendent of Insurance after the granting of such license, for cause shown, and after a hearing may determine any person so appointed, or any person heretofore appointed as agent, to be unsuitable to

act as such agent, and shall thereupon revoke such license and notify both the company and the agent of such revocation. Unless revoked by the Superintendent of Insurance, or unless the company by written notice to the superintendent cancels the agent's authority to act for it, such license and any other license issued to an agent or any renewal thereof shall expire on the last day of February next after its issue. But any license issued and in force when this act takes effect or thereafter issued, may in the discretion of the superintendent, be renewed for a succeeding year or years by a renewal certificate without the superintendent's requiring the detailed information required by this act. A foreign company shall pay a fee of two dollars for every such license and for each renewal thereof. While such license remains in force, a foreign company shall be bound by the acts of the person named therein within his apparent authority as its acknowledged agent."

Section 654, General Code, mentioned in your letter refers to foreign life insurance companies and since the company mentioned by you is a domestic life insurance company, this section would therefore be inapplicable.

Section 665, General Code of Ohio, provides as follows:

"No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with."

Section 9586, General Code, provides as follows:

"A person who solicits insurance and procures the application therefor, shall be held to be the agent of the party, company or association, thereafter issuing a policy upon such application or a renewal thereof, anything in the application or policy to the contrary notwithstanding."

The sole question raised in your inquiry is as to whether a hotel manager or hotel clerk who issues the identification card to a guest and incidentally informs him as to the advantages and benefits offered by this identification card or certificate, is required to be licensed as an insurance agent under the insurance laws of Ohio. By the terms of Section 9586, General Code, supra, this person is held to be the agent of the company, anything in the application, certificate or policy to the contrary notwithstanding.

There is no question raised but what the transaction is one of insurance. In fact it is so represented to the hotel guest that he is to be given the benefit of an accident insurance policy at once upon his registering as a guest of the hotel.

In the case of *Palmetto Insurance Company vs. Conn*, 272 U. S. 295, the question at issue was whether or not local automobile salesmen who sold automobiles to customers, which automobiles automatically carried fire and theft insurance, were violating the insurance laws of Ohio in so selling the cars including the insurance, without being licensed as insurance agents. The purchaser of a car in question received the insurance without any additional cost. He could not buy the car without the insurance any cheaper than with the insurance. The insurance became automatically effective when the purchaser took delivery, or a bill of sale, without regard to the wish of the purchaser. The sales company made monthly reports to the insurance

company of all cars for which insurance was thus provided and the insurance company sent certificates of insurance to the respective purchasers.

It was held in that case that the statutes of Ohio forbid the insurance of property in the State except by a legally authorized agent, resident in Ohio. Justice Holmes in writing the opinion in that case, on page 305, said:

“Whatever technical form may be given to the reasoning, the substance is that by acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist. It does not matter whether his getting it was a large or an inconspicuous feature of his bargain. It was part of it in any event, and we cannot doubt that the lower Court was right in holding that in such circumstances the State could insist upon its right to tax.”

Under Section 617, General Code, the Superintendent of Insurance is required to see that the laws relating to insurance are duly executed and enforced. This he can not do unless he has some supervisory authority over the parties to the transaction. In other words he may license an agent on certain conditions or he may revoke the license in proper cases of violation.

Specifically answering your question, therefore, it is my opinion that the transaction in question is one substantially amounting to insurance and that the person responsible for the procuring, receiving or forwarding of the identification card to the guest at the hotel is required to be duly licensed by the insurance department of Ohio in compliance with Section 644, General Code of Ohio.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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2862.

GAMBLING—PUNCH BOARD—WHEN SAME IS A GAMBLING DEVICE.

*SYLLABUS:*

*A punch board, bearing numbers from one to five hundred, which is operated by the payment of a sum of money in exchange for which the patron obtains in any event a package of gum and may obtain various size boxes of candy as prizes, depending upon chance, is a gambling device within the provisions of Sections 13056 and 13066 of the General Code.*

COLUMBUS, OHIO, November 10, 1928.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

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

“Several inquiries have been made of late relative to the placing of various punch board devices in the county, the question being put to me as to whether or not these various punch boards come within the inhibition of the Ohio Statute against gambling devices.

One of the devices described to me is put out by an Ice Cream Company. The board bears numbers from 1 to 500. A package of gum is given with each punch. Various numbers on the board call for various sized boxes of candy as prizes, the number of prizes being from 50 to 75. The Ice Cream