

By way of specific answer to the question submitted in your communication I am of the opinion that the Board of Trustees of the Ohio State University has no power to enter into any contract for the sale and delivery of electricity to the Battelle Memorial Institute.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2917.

APPROVAL, AGREEMENT BETWEEN HIGHWAY DEPARTMENT AND COUNTY COMMISSIONERS OF ATHENS COUNTY FOR RECONSTRUCTION OF A BRIDGE OVER HOCKING RIVER, ATHENS COUNTY.

COLUMBUS, OHIO, November 22, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication submitting a proposed agreement between your department and the commissioners of Athens County relative to the reconstruction of a bridge situated partly within the City of Athens over which said Highway No. 159 crosses the Hocking River.

I have carefully examined said contract and finding the same to be in proper legal form, I hereby approve the same and return it herewith.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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2918.

OFFICES—VACANCY—COUNTY COMMISSIONER—NO ELECTION FOR UNEXPIRED TERM—APPOINTEE HOLDS OVER FOR UNEXPIRED TERM OF DECEASED PREDECESSOR.

SYLLABUS:

*Under the provisions of Section 2397, General Code, where a county commissioner was duly appointed to fill a vacancy which occurred more than thirty days before a regular election and at said regular election no one was elected for the remainder of the unexpired term of his predecessor in office, said appointee is entitled to hold his said office during the remainder of the unexpired term.*

COLUMBUS, OHIO, November 22, 1928.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

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

"One of our county commissioners died last spring, and a new commissioner was appointed to fill the vacancy under G. C. 2397. At this last election held on the 6th of this month, no one ran for the short term to fill the vacancy as required by said section, and no one was elected for said short term.

1. Is it the duty, or is it permissible for said appointed commissioner to continue in office and serve the short term on out?
2. If so, would it be necessary for him to be re-appointed?"

According to the information contained in your letter, there was no election of a county commissioner for the unexpired term. You therefore inquire as to the right of the duly appointed commissioner to continue in office during the remainder of the unexpired term of the county commissioner who deceased last spring while in office.

Section 2397, General Code, provides as follows:

"If a vacancy in the office of commissioner occurs more than thirty days before the next election for state and county officers, a successor shall be elected thereat. If a vacancy occurs more than thirty days before such election, or within that time, and the interest of the county requires that the vacancy be filled before the election, the probate judge, auditor, and recorder of the county, or a majority of them, shall appoint a commissioner, *who shall hold his office until his successor is elected and qualified.*"

If there had been an election for a county commissioner at the November election of 1928, for the vacancy under the provisions of Section 2396, General Code, such person elected to fill the vacancy would have held his office for the unexpired term for which his predecessor was elected. The voters had a right to elect a commissioner for this short term but failed to do so. Therefore you inquire as to the status of the man heretofore appointed under the terms of Section 2397, General Code.

It would seem that the concluding words of said Section 2397, General Code, are dispositive of your inquiry, to-wit: "who shall hold his office until his successor is elected and qualified." There was no successor elected and qualified, and, therefore, he would hold until the expiration of the term of his predecessor in office.

In an opinion of the Attorney General for 1927, Vol. I, page 53, it was held that an appointee to a vacancy in the office of county commissioner will hold his office as county commissioner until his successor is elected and qualified at the November election of 1928, and the person so elected at that time will hold his office for the unexpired term for which his predecessor was elected.

In an opinion found in Opinions of the Attorney General for 1927, Vol. III, page 1651, construing Section 2397, General Code, the syllabus is as follows:

"1. Under Section 2397, General Code, when a vacancy occurs in the office of county commissioner more than thirty days before the next election for state and county officers, a successor must be elected at said election to serve for the unexpired term of the commissioner who was elected to the office.

2. Where a county commissioner is appointed to fill a vacancy by the probate judge, auditor and recorder of the county as provided in Section 2397, General Code, such appointee may only serve until his successor is elected and qualified and the fact that the commission of the Governor states that the appointment is for the unexpired term does not effect a change in the law."

The pertinent part of Section 10, General Code, is 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.  
\* \* \* "

It is clearly the policy of the state to discourage the needless creation of vacancies in office by providing that any person holding an office of public trust shall continue therein until his successor is elected or appointed and qualified, unless it is otherwise provided in the constitution or laws.

It is said in the case of *The State, ex rel., vs. Howe*, 25 O. S. 588, by McIlvaine, J., "that the General Assembly may provide against the recurrence of vacancies by authorizing incumbents to hold over their terms in cases where the duration of their terms is not fixed and limited by the constitution, and that from this it results that the evils contemplated as likely to result from vacancies in office are guarded against by confining the exercise of the power to fill vacancies to those cases where no one is authorized by law to discharge the public duties; which, we think, is the constitutional scope of that power."

Also in *The State ex rel., vs. McCracken*, 51 O. S. 123, where at page 129, it is observed that:

"The recognized policy of the state is to avoid, if practicable, the creation of a vacancy in an elective office, and where the right to hold over is given in language that is not limited, and the same is not otherwise qualified, a court would hardly be justified in seeking for an unnatural construction by which a limit would be placed upon the right. In contemplation of law there can be no vacancy in an office so long as there is a person in possession of the office legally qualified to perform the duties."

Specifically answering your question, therefore, it is my opinion that since there was no one elected for the short term of county commissioner at the November election of 1928, the said appointed commissioner is entitled to hold said office for the remainder of the unexpired term of his predecessor, under his original appointment.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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2919.

SHERIFF—COUNTY COMMISSIONERS MAY REIMBURSE FOR COST OF REPAIRS TO AUTOMOBILE DAMAGED IN PURSUIT OF FLEEING CRIMINAL.

SYLLABUS:

*A sheriff or his deputy, who finds it necessary to use his own automobile in the pursuit of a fleeing criminal, may lawfully be paid from county funds for the cost of repairs to the said machine made necessary by reason of an accident which occurs during said pursuit, when said accident is through no fault of the officer.*