

to the township clerk in so far as the duty to issue a hunter's and trapper's license is concerned.

What has been said heretofore has been confined to the general law and without special reference to charter cities. As to the corresponding officers in charter cities it is to be noted from a preceding paragraph that the officers corresponding to the fiscal officers in non-charter cities are the fiscal officers of such cities. Section 5625-1, supra. Hence, it could not be said specifically who would have the right to issue a hunter's and trapper's license in charter cities, but the proper persons would have to be determined from an examination of the charter provisions.

Specifically answering your question, I am of the opinion that:

1. When a township becomes coterminous with a non-charter city, the city auditor becomes the proper person to issue a hunter's and trapper's license.

2. When a township becomes coterminous with a charter city, the fiscal officer of the city, determined by reference to the charter provisions, may issue a hunter's and trapper's license.

Respectfully,
GILBRET BETTMAN,
Attorney General.

1775.

APPROVAL, BONDS OF LYONS CENTRALIZED SCHOOL DISTRICT,
FULTON COUNTY—\$20,000.00.

COLUMBUS, OHIO, April 12, 1930.

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

1776.

APPROVAL, BONDS OF SYLVANIA VILLAGE SCHOOL DISTRICT, LUCAS
COUNTY—\$35,000.00.

COLUMBUS, OHIO, April 12, 1930.

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

1777.

VACANCY—DEATH OF CLERK OF COMMON PLEAS COURT SHORTLY
BEFORE BEGINNING OF HIS NEW TERM—HOW LONG APPOINTEE
HOLDS OFFICE.

SYLLABUS:

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.

COLUMBUS, OHIO, April 14, 1930.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication which reads:

“On and prior to the 21st day of June, 1929, one T. L. Morgan was Clerk of Courts of Athens County, Ohio. On the said the 21st day of June, 1929, the said T. L. Morgan died at which time the county commissioners of Athens County, Ohio, appointed one Ena M. Nelson, then a deputy in the office of Clerk of Courts, clerk pro tempore. The resolution of the county commissioners is as follows:

ATHENS, OHIO, June 21, 1929.

‘Appointment of Clerk of Courts,
Ena M. Nelson, Athens, Ohio.

The Board of County Commissioners of Athens County, Ohio, in session this 21st day of June, 1929.

Whereas, a vacancy exists in the office of the Clerk of the Court of Common Pleas of Athens County, Ohio, occasioned by the death this day of T. L. Morgan, clerk.

Be it resolved by said board of county commissioners that we appoint Ena M. Nelson as clerk pro tempore of the Court of Common Pleas to fill said vacancy, as provided by Section 2870 of the General Code of Ohio. Said appointment to continue until her successor shall have been elected and qualified according to law.

J. H. Grosvenor.

J. W. Lax.

G. A. Daugherty.’

On the 5th day of August 1929, the County Commissioners of Athens County, Ohio, again appointed Miss Nelson clerk pro tempore. The resolution concerning the same is as follows:

‘Clerk of Courts Appointment:

Motion presented for adoption by Mr. Daugherty.

Whereas, a vacancy exists in the office of the Clerk of Courts of Common Pleas of Athens County, Ohio, occasioned by the death of T. L. Morgan, clerk.

Be it resolved by the Board of County Commissioners that we appoint Ena M. Nelson, as clerk pro tempore of the Court of Common Pleas to fill said vacancy, as provided by Section 2870 of the General Code of Ohio.

Motion seconded by Mr. Lax, and upon the roll being called the result was as follows: Grosvenor, yea; Daugherty, yea, Lax, yea.’

Miss Nelson gave bond as such clerk on the 21st day of June, 1929—entered upon her duties and has since said date acted as clerk of courts of this county.

QUERY:

1. In face of the provisions contained in Section 2867 of the General Code, should there be a clerk of courts elected in Athens County at the ensuing general election?

2. Should some person having the qualifications of clerk be a candidate at the ensuing election and receive sufficient votes, would his or her election be valid?

3. Does Miss Nelson's appointment under favor of the commissioners' action of August 5, 1929, carry until the first Monday of January, 1933?"

Section 2867, General Code, as last amended in 112 Ohio Laws 139, effective July 25, 1927, reads as follows:

"There shall be elected in each county, at the regular election in 1928, a clerk of the Court of Common Pleas, who shall assume office on the first Monday of August next after his election and who shall hold said office for a period of three years and five months or until the first Monday of January, 1933. There shall be elected in each county, at the regular election in 1932 and biennially thereafter, a clerk of the court of Common Pleas who shall assume office on the first Monday of January next after his election and who shall hold said office for a period of two years."

Although you do not so state, I assume that T. L. Morgan had been elected at the regular election in 1928 and would have started his new term on August 5, 1929, in accordance with the above section, had he not died before such date. It was only the old term that was vacated on June 21, 1929, as a vacation does not exist by reason of the death of an officer before his term begins until the time for the commencement of such term. *State vs. Metcalf*, 80 O. S. 244; *State vs. Dahl*, 55 O. S. 195; *State vs. McGregor*, 44 O. S. 628; *State vs. Rolson*, 75 O. S. 587.

Article XVII, Section 2 of the Ohio Constitution provides in the last sentence as follows:

"* * * All vacancies in other elective offices (than state officers or members of the General Assembly) shall be filled for the unexpired term in such manner as may be prescribed by law." (Matter in parenthesis the writer's.)

It will be observed that the Constitution has left the details of the appointment to fill a vacancy in a county office to be regulated by the Legislature. The Legislature has made provisions for the matter of filling vacancies in the office of the clerk of the Common Pleas Court by Section 2870, General Code, mentioned in your letter. Said section reads as follows:

"When a vacancy occurs in the office of clerk of the Court of Common Pleas, the county commissioners shall appoint a clerk pro tempore, who shall give bond and take the oath of office prescribed for the clerk-elect. If the commissioners are not in session when such vacancy occurs, the county auditor shall forthwith give written notice thereof to each of them, and thereupon they shall meet and make the appointment. If the commissioners fail to make an appointment for ten days after they severally have had such notice of vacancy, the appointment shall be made by the county auditor."

It is apparent that the above section makes no provision for the tenure of office of the appointee. Such being the case, the general law on the subject must be examined. Section 10, General Code, is applicable and reads 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."

Said Section 10, General Code, was formerly Revised Statute 11 and read as follows:

"When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office till his successor is elected and qualified, and such successor shall be elected at the first proper election that is held more than thirty days after the occurrence of the vacancy; but 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 of the same, of any one elected to such office before the occurrence of such vacancy."

The only change in the language of the statute, all of which was made by the codifying commission in 1910, is shown by the underscored portion in the following words:

"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."

In an opinion found in Opinions of the Attorney General for 1927, Vol. I, p. 155, the then Attorney General said at p. 158, after stating the general rules of interpretation when statutes are codified:

"It is my opinion that the words 'at the first general election for the office which is vacant' now contained in Section 10 of the General Code, mean the same as the words 'at the first proper election,' contained in Section 11 of the Revised Statutes."

It had been held under Revised Statute 11 that "the first proper election" is the first election at which the officer would have been chosen had no such vacancy occurred. *State vs. Nash*, 66 O. S. 612; *State vs. Barbee*, 45 O. S. 347.

Inasmuch as Section 2867, General Code, heretofore quoted, does not provide for an election for a clerk of the Common Pleas Court until the general election in 1932, it would seem that there could only be a proper election for the successor to the clerk's office then.

The county commissioners acted properly in accordance with Section 2870, General Code, *supra*, and appointed a pro tempore clerk to fill the vacancy in the old term on June 21, 1929. Since there was no general election for that office between the period from July 21, 1929, to August 5, 1929, at which a successor could be elected, Ena Nelson lawfully filled out the unexpired old term of T. L. Morgan. Then there existed a new vacancy, as I have pointed out already, which the county commissioners were authorized to fill and did fill under the terms of Section 2870, General Code, by again appointing the said Ena Nelson.

Under Section 10, as it has been construed, it is not possible to elect a successor until the 1932 election. At that election, a successor should be elected to serve the period of the unexpired term between the election date and the first Monday in January, 1933. At that time, the regularly elected clerk of courts at the 1932 election should take office for a two year period. Your first question will thus be answered in the negative.

As I have pointed out hitherto, the election to provide a successor must be one at which such an officer is regularly and properly elected and there is no authority for an election for the clerk's office in 1930; hence your second question will also be answered in the negative.

Answering your third question specifically, from the above discussion, it is evident that Ena Nelson's term will not extend to the first Monday in January, 1933, but rather until the time when a successor, elected at the 1932 election, can qualify and assume office. It is believed that a more extended discussion of your inquiry is unnecessary.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1778.

MEMBERS—OF ASSOCIATIONS TO APPREHEND FELONS AND MIS-
DEMEANANTS ORGANIZED UNDER SECTIONS 10200, ET SEQ.,
GENERAL CODE—MAY NOT RECEIVE FEES OR CARRY CON-
CEALED WEAPONS.

SYLLABUS:

1. *Officers and members of an association incorporated under the provisions of Sections 10200 et seq., of the General Code, are not entitled to the payment of fees for making arrests and serving warrants.*

2. *Members and officers of these associations are not "specially appointed police officers" within the meaning of the provisions of Section 12819, of the General Code, and therefore have no authority to carry concealed weapons.*

COLUMBUS, OHIO, April 14, 1930.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which reads as follows:

"Certain officials of the Ohio State Protective Association in this county have requested this office to secure for them an opinion from you as to what extent, if at all, members of this association are entitled to fees in criminal actions wherein they were the arresting officers.

Are the members of this association privileged to carry guns? Would the fact that they executed and filed a bond in the sum of one thousand dollars with the clerk of courts, give them such authority?"

I assume that the Ohio State Protective Association, to which you refer in your letter, is an association organized under the provisions of Sections 10200, et seq. of the General Code. Officers and members of such associations are authorized to apprehend felons and misdemeanants, by virtue of the provisions of Sections 10203 and 10204 of the General Code. Section 10203, General Code, provides:

"The officers and members of the association upon the proper certificate of the presiding officer thereof, when so elected or appointed, if a felony has been committed, may pursue and without warrant arrest any person whom they believe or have reasonable cause to believe guilty of the offense, and arrest and detain the alleged criminal in any county of the state to which he