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COUNTY COURTS; JUDGE — FAILURE AND REFUSAL TO TAKE OATH OF OFFICE — §1907.09 R.C. — SUCH OFFICE VACANT; §3.30 R.C. AND APPOINTMENT IS PROVIDED, SEC. 13, ART. IV, OHIO CONSTITUTION.

## SYLLABUS:

Where a person elected to the office of county judge fails and refuses to take the oath of office as required by Section 1907.09, Revised Code, the office is, under the provisions of Section 3.30, Revised Code, to be considered as vacant and such vacancy shall be filled by the governor as provided in Section 13, Article IV, Ohio Constitution.

Columbus, Ohio, January 15, 1958

Hon. T. J. Kremer, Jr., Prosecuting Attorney  
Monroe County, Woodsfield, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Your opinion is requested as to whether or not a vacancy exists in the office of County Court Judge for Monroe County, Ohio.

“The first paragraph of Section 1907.061 of the Revised Code of Ohio states:

‘Every person elected judge of the county court shall forthwith take and subscribe the oath of office before the clerk of the court of common pleas or a judge thereof or before a judge of the county court to which he is elected. A record of such oath shall be made by the administering officer and filed with the clerk of the court of common pleas.’

“O. T. G. was elected to the office of County Court Judge but refuses to take office. His only reason for refusing is that he states that the compensation of the office is not sufficient for his needs. He has stated to the County Commissioners as well as to me as Prosecuting Attorney of this county, that he would not and could not accept the judgeship at the minimum salary which, in this county, amounts to \$1960 per year.

“The following is a copy of an entry in the Commissioners’ journal pertaining to the salary of the County Court Judge, to-wit:

August 5, 1957.

"It was moved by Mr. Adams and seconded by Mr. Roth that the county court shall have an office in the court house, effective January 1, 1958. The salary shall be the statutory salary set by the legislature. The extra One Thousand Dollars (\$1000.00) will not be furnished by the county.

Vote: Mr. Hopton, Yea; Mr. Adams, Yea; Mr. Roth, Yea.'

"O. T. G. knew of this action by the County Commissioners before and after his election. There has been some talk by G. that the office space set up for him was not to his liking, but this appears to be incidental, since the salary question is the sole question in the case.

"Under Section 1907.082, the County Commissioners could give additional compensation to the county court judge if they so desired, but they have gone on record that they would not do so and advised the elected Judge, O. T. G., of this fact before the election and after the election.

"Since there is no valid reason for G not to assume his duties, and since he would not take the oath of office forthwith after being elected, it would appear that the office has been vacated.

"The following is a copy of the action taken by the County Commissioners in regard to the office of the County Court Judge on January 6, 1958, to-wit:

'O. T. G. of Wayne Township was elected county judge on November 5, 1957, and refuses to take the oath of office. Therefore, the Commissioners declare the office forfeited.

Moved by Mr. Roth, seconded by Mr. Hopton, to declare the office of county judge vacant.

Vote: Mr. Adams, Yea; Mr. Roth, Yea; Mr. Hopton, Yea.'"

In addition to the paragraph which you have quoted from Section 1907.061, Revised Code, I call attention to the further provision of that statute relative to a bond, reading as follows:

"Within ten days after taking the oath of office, each county court judge, before he is authorized to discharge the duties of his office, shall give a bond to this state in the amount of five thousand dollars, with at least two sufficient sureties, conditioned upon the faithful performance of the duties of such office. Such bond shall be approved by a judge of the court of common pleas

in such county and deposited with the clerk of the court of common pleas.”

I find nothing in the statutes relating directly to a county judge which provides for a situation such as your letter sets out, to-wit, the refusal of the judge to qualify for the office to which he has been elected. I note the statement in your letter as to the action of the county commissioners in declaring the office forfeited by reason of the refusal of Mr. G. to take the oath of office.

I do not consider that this action had any legal effect, since it appears very clear that one cannot forfeit or be removed from that which he has never had. Certainly, in the case which you present, the judge elect has never occupied the office. He has very positively refused to accept it. I am of the opinion that one who has been elected to an office cannot be forced to take it nor can he be considered an officer merely because of his election.

Section 3.30, Revised Code, reads as follows:

“A person elected or appointed to an office who is required by law to give a bond or security previous to the performance of the duties imposed on him by his office, who refuses or neglects to give such bond or furnish such security within the time and in the manner prescribed by law, *and in all respects to qualify himself for the performance of such duties*, is deemed to have refused to accept the office to which he was elected or appointed. Such office shall be considered vacant and shall be filled as provided by law.”  
(Emphasis added)

Under the provisions of Section 1907.061, *supra*, the judge-elect is required to take the oath forthwith after his election, but he has ten days thereafter in which to give the required bond; but he must take the oath and give the bond before he is authorized to discharge the duties of his office. Accordingly, the provisions of Section 3.30, *supra*, appear to govern; and his failure and refusal to take the oath, that being one of the prescribed qualifications, certainly amounts to a refusal to take the office, and results in a vacancy, which as the statute states, shall be filled as provided by law. The provision for filling such vacancy by the governor, is found in Section 13, Article IV, Ohio Constitution.

It is accordingly my opinion and you are advised that where a person elected to the office of county judge fails and refuses to take the oath of office as required by Section 1907.09, Revised Code, the office is, under

the provision of Section 3.30, Revised Code, to be considered as vacant and such vacancy shall be filled by the governor as provided in Section 13, Article IV, Ohio Constitution.

Respectfully,  
WILLIAM SAXBE  
Attorney General