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COUNTY ENGINEER—ELECTION NOV., 1956—RESIGNATION  
EFF. JANUARY 31, 1957—APPOINTMENT OF SUCCESSOR—  
315.04 RC—SUCCESSOR TO BE ELECTED FOR UNEXPIRED  
TERM AT GENERAL ELECTION IN NOV., 1958.

SYLLABUS:

Where an incumbent of the office of county engineer has been elected at the general election in November of 1956 for a four year term, commencing on the first Monday in January 1957, and where such incumbent resigns effective January 31, 1957, the individual thereafter appointed by the board of county commissioners to fill such vacancy as provided in Section 315.04, Revised Code, will hold such office until the election and qualification of his successor; and such successor, under Section 315.04, Revised Code, should be elected for the unexpired term at the general election in November 1958.

Columbus, Ohio, March 11, 1957

Hon. James W. Freeman, Prosecuting Attorney  
Coshocton County, Coshocton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On January 29, 1957 Joseph D. Boz, County Engineer of Coshocton County, Ohio, resigned, effective as of January 31, 1957, and on February 1, 1957 the Board of County Commissioners of Coshocton County, Ohio, appointed John W. Alter to serve as Coshocton County Engineer under the provisions of Section 315.04 of the Revised Code of Ohio. We are confronted with the problem as to the length of the term to which Mr. Alter has been appointed. The second paragraph of said Section 315.04 reads:

'A successor shall be elected for the unexpired term, at the first general election for the office which is vacant . . .'

"Does Mr. Alter's term expire

1. On the date of the next general election in November of 1958; or,
2. On the date of the next general election in November of 1960; or,
3. On the first Monday in January of 1961 when the unexpired term of Mr. Boz would terminate.

The statute applicable to the holding of an election to fill a vacancy in the office of county engineer is Section 315.04, Revised Code, which reads as follows:

"If a vacancy occurs in the office of county engineer because of death, resignation or otherwise, the board of county commissioners shall appoint a suitable person as engineer, who, upon giving bond and taking the oath of office required by Section 315.03 of the Revised Code, shall enter upon the discharge of the duties of such office.

*"A successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy shall have occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election*

to fill such unexpired term shall not be held and the appointment shall be for such unexpired term." (Emphasis added.)

By referring to Section 315.01, Revised Code, it will be noted that the county engineer is required to be elected quadrennially and that he is to assume office on the first Monday in January next after his election, holding such office for four years. This section is a recodification of former Section 2782, General Code, and by reference to that section, as it existed immediately prior to the recodification of 1953, it will be seen that provision was made for the quadrennial election here in question to be held at the regular election in 1928 and quadrennially thereafter. Thus it appears, in the situation you have described, that the incumbent who resigned effective January 31, 1957, had been elected at the regular state election in 1956 for a term of four years, beginning on January 1, 1957.

In this situation the precise question confronting us is the determination of what is "the first general election for the office which is vacant that occurs more than forty days after the vacancy shall have occurred" as used in Section 315.04, *supra*.

First we may note that the term "general election" is defined in Section 3501.01, Revised Code, to include "any election held on the first Tuesday after the first Monday in November."

If we were to apply this definition literally in the instant case, it is apparent that the first general election following the vacancy would be that which will be held in November of 1957.

By referring, however, to Section 1, Article XVII, Ohio Constitution, it will be seen that it is beyond the power of the General Assembly to provide for the election of county officers otherwise than in the even numbered years. For this reason, Section 315.04 may not be construed to provide for an election filling the vacancy here in question in 1957.

We may next inquire what is meant by the expression "the first general election *for the office*" as this language is used in Section 315.04.

Upon first impression it would seem that the next election "for the office" of county engineer as provided in Section 3105.01, Revised Code, would be the election in November of 1960.

I note, however, that a similar expression was involved in the case of State, *ex rel.* Shriver, v. Hayes, 148 Ohio St., 681, where the court had

under consideration the question of an election to fill a vacancy in the office of county engineer. In that case, the general provision then set out in Section 10, General Code, for the filling of a vacancy of elective offices was found to be applicable. In that section it was provided that where an appointment was made to fill a vacancy, such appointee should hold office until his successor was elected and qualified. Section 10, General Code, then further provided that "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."

In the Hayes case, the individual who had been elected in 1944 for a four year term died in September, 1946, while serving a term that would expire on the first Monday of January, 1949. There was thus squarely presented in that case the question of when the "first general election for the office" would occur.

In the opinion by Judge Hart, we find the following statement, page 685:

"His death created a vacancy more than 30 days before the general election on November 5, 1946, and, under the provisions of Section 10, General Code, above quoted, the county engineer should have been elected on that date to fill the unexpired term of Travis."

The holding in the syllabus in the Hayes case on the point here involved, is as follows:

"3. When the office of county engineer becomes vacant more than thirty days before a regular *state election*, a county engineer shall be elected for the unexpired term at such succeeding regular election \* \* \*" (Emphasis added.)

Although the point was nowhere seriously discussed in this opinion, it is evident from the language of Judge Hart, above noted, and from the syllabus, that the court considered the language "first general election for the office" as used in Section 10, General Code, had reference to the next succeeding election to which county officers could constitutionally be elected to office, rather than to the next succeeding general election at which a successor would normally be elected for a succeeding term.

It is my view that a similar conclusion must be reached in the case at hand for it seems quite unlikely to me that the legislature would

provide for an election to fill a vacancy in an office only on the date when an election for such office for a succeeding term would normally occur. Moreover, any such view is quite clearly negated by that provision in Section 315.04, Revised Code, to the effect that no such election shall be held "when the unexpired term ends within one year immediately following the date of such general election."

It is therefore my opinion that where an incumbent of the office of county engineer has been elected at the general election in November of 1956, for a four year term, commencing on the first Monday in January, 1957, and where such incumbent resigns effective January 31, 1957, the individual thereafter appointed by the board of county commissioners to fill such vacancy as provided in Section 315.04, Revised Code, will hold such office until the election and qualification of his successor; and such successor, under Section 315.04, Revised Code, should be elected for the unexpired term at the general election in November 1958.

Respectfully,  
WILLIAM SAXBE  
Attorney General