

OFFICIAL OPINION NO. 7

February 24, 1956

Mr. J. Otto Lee, Clerk
State Election Board
102 North Senate Avenue
Indianapolis, Indiana

Dear Mr. Lee:

This is in reply to your letter of February 9, 1956, requesting an Official Opinion, which reads as follows:

“The Secretary of the Vigo County Election Board has written us stating that Charles C. Modesitt was elected in 1952 to the office of Vigo County Surveyor for his first four-year term. He died February 27, 1953, while in office, and on March 16, 1953, Paul D. Meadows was appointed Vigo County Surveyor to fill the vacancy created.

“Mr. Meadows was then instructed to become a candidate for Vigo County Surveyor in the election of 1954, which he did, was elected, and has a commission from the Governor.

“When he was instructed to become a candidate in 1954, he was told he could only be elected for the last two years of Mr. Modesitt’s unexpired term, which are the years 1955 and 1956. He was further instructed he would have to become a candidate for Vigo County Surveyor again this year, 1956, and run for a four-year term.

“Their question is, when he was elected in 1954 as Vigo County Surveyor, was he elected to a four-year term, which would make it unnecessary for him to run again this year, 1956?”

It appears that Vigo County Surveyor Paul D. Meadows, upon the death of Charles C. Modesitt, was appointed Vigo County Surveyor by virtue of 1 R. S. 1852, Ch. 115, Sec. 4, as found in Burns’ Indiana Statutes (1951 Repl.), Section 49-405, which provides as follows:

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“The board of county commissioners shall fill all (other) vacancies in county or township offices, except such township or other offices the vacancies in which are otherwise provided for; and such appointment shall expire when a successor is elected and qualified, who shall be elected at the next general or township election, as the case may be, proper to elect such officers.”

1 R. S. 1852, Ch. 115, Sec. 4, *supra*, has been construed to provide that the filling of vacancies in county offices such as the county surveyor, are made by the board of county commissioners of the county in which the vacancy occurs. In the cases of *The State ex rel. Hench v. Chapin* (1886), 110 Ind. 272, 11 N. E. 317, and *State ex rel. Culbert v. Linkhauer* (1895), 142 Ind. 94, 41 N. E. 325, the aforementioned section was construed to provide that persons appointed under this provision shall hold office only until their successors are elected and qualified at the next general election.

A later section of the same Act, which is the Acts of 1 R. S. 1852, Ch. 115, Sec. 7, as found in *Burns' Indiana Statutes* (1951 Repl.), Section 49-409, provides:

“Every person elected to fill any office in which a vacancy has occurred shall hold such office for the unexpired term thereof.”

The Acts of 1 R. S. 1852, Ch. 115, Sec. 7, *supra*, was construed in the cases of *Lake County Election Board et al. v. State ex rel. Eyears* (1946), 224 Ind. 465, 68 N. E. (2d) 787, and *Carson v. State ex rel. Bath* (1896), 145 Ind. 348, 44 N. E. 360, not to apply to the election of people to fill constitutional offices but only to apply to the election of those people filling vacancies in offices which were created by the Legislature. The exact problem in question was very aptly and thoroughly discussed in 1946 O. A. G., page 115, No. 35.

The Indiana Constitution, Art. 6, Sec. 2 provides that the county surveyor shall be elected for a term of four years.

It is, therefore, my opinion that Vigo County Surveyor Paul D. Meadows, when elected in 1954 as Vigo County Surveyor, was elected to a four-year term and it is not necessary for him to run for re-election this year.