

1956 O. A. G.

OFFICIAL OPINION NO. 8

February 28, 1956

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

Dear Mr. Lee:

This is in reply to your request for my Official Opinion on the following question:

“Russell E. Stewart, Judge of the Madison Circuit Court at Anderson, Indiana, was elected at the general election in 1952 as judge of the Madison Circuit Court.

“Judge Joseph A. Dickey, judge of said court, was elected in 1950 and had served approximately 10 months on his term at his death. Judge Gerald Shine was appointed by Governor Schricker and served as judge until January 1, 1953, at which time Judge Stewart started his term.

“Judge Stewart wishes an official opinion as to when his term expires.

“Will you kindly furnish the State Election Commissioners an official opinion on this question.”

A somewhat analogous situation was considered in State *ex rel. Custer et al. v. Schortemeier*, Secretary of State (1926), 197 Ind. 507, 151 N. E. 407 and the Court held that when a circuit judge passed away, the governor should fill the vacancy by appointment to expire when a successor shall have been elected and qualified; further, that an election should be held to elect a successor at the next general election after the death of the circuit judge.

Under the Indiana Constitution, Art. 7, Sec. 9, the term of a circuit judge is six [6] years and therefore, when a successor is elected as set out above, he would be elected for a full term of six [6] years and until his successor is elected and qualified.

In view of the foregoing I am of the opinion that Judge Stewart was elected to serve the full constitutional term of six [6] years and until his successor was elected and qualified.