

OPINION 13

OFFICIAL OPINION NO. 13

March 27, 1956

Mr. J. Otto Lee, Clerk
State Election Board
102 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. Lee:

We have received your letter of March 12, 1956, which raises the following question:

“We have received a letter from Vester Porter, Clerk of the Spencer Circuit Court, inquiring whether the Coroner there should run for election this year * * *.

“Since this involves an important question of a constitutional office, we respectfully request an official opinion.”

We are advised by the Clerk of the Spencer Circuit Court, that the present Coroner was appointed to that office in April, 1953, following the resignation of the Coroner who was elected at the general election of 1952. We further understand from said Clerk that the present Coroner ran for office in 1954 and was elected and now holds office by virtue thereof.

It appears that the Spencer County Coroner was appointed Spencer County Coroner 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:

“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 Coroner, 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 the 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.

The Indiana Constitution, Art. 6, Sec. 2, provides with regard to coroners:

“There shall be elected, in each county by the voters thereof, at the time of holding general elections, a * * * Coroner * * *. The * * * Coroner * * * shall continue in office four years; and no person shall be eligible to the office of * * * Coroner more than eight years in any period of twelve years * * *.”

In the case of Lake County Election Board *et al.* v. State *ex rel.* Eyears (1946), 224 Ind. 465, 68 N. E. (2d) 787, our Court considered a factual situation involving a County Auditor, wherein the circumstances very closely paralleled those in the instant case. The Court there said, after reciting the Indiana Constitution, Art. 6, Sec. 2, at page 467 of the opinion:

“Thus it conclusively appears that the auditor of a county, in Indiana, is an office, the existence, and the term of which are provided for by the Constitution of the State.”

It should be noted here that the Eyears case, *supra*, also determined the propriety of running for election in the next general election following an appointment to fill a vacancy in a constitutional office, in the following language at page 468:

“The general election proper to elect an officer to fill a vacancy in the office of auditor of a county is the general election provided for by law—§ 29-701, Burns’ 1933—and occurring next after such vacancy, if the vacancy occurred before the time required to give notice of such election. Beal v. Ray (1861), 17 Ind. 554; Beal v. Morton (1862), 18 Ind. 346 * * *.”

The Acts of 1 R. S. 1852, Ch. 115, Sec. 7, as found in Burns’

OPINION 13

Indiana Statutes (1951 Repl.), Section 49-409, provides as follows:

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

Again at page 468 of the Eyears case, *supra*, it is stated:

“This statute applies with full force and effect to all offices created by the General Assembly, but it has been held to be unconstitutional and void in so far as it may be thought to apply to offices created, and the terms of which are fixed by our State Constitution.” (Citations omitted)

The question presented by your letter was first considered by our Court in the case of *The Governor v. Nelson* (1855), 6 Ind. 495. In that case, Sinclear was commissioned Clerk of the Circuit Court in 1852; in 1854 he died and Nelson was duly appointed to fill the vacancy; Nelson qualified and served until the next general election where he was elected Clerk of the Circuit Court in October, 1854. The Governor refused to issue a commission for the full term running from the date of the election of Nelson. Nelson petitioned for a writ of mandamus against the Governor. The Court granted the writ using the following language at pages 499 and 500:

“Under these constitutional provisions, we are of opinion that the term of Nelson’s office was for four years from the period of his election in October, 1854, and that his commission should have run accordingly. * * * For the second section of article 6 does not provide for part of a term. *It contemplates a full term as the result of each popular election.* (Our emphasis)

“* * * But on the hypothesis that every election of clerk, at, &c., is for a full term, the several parts fall in harmoniously. We therefore conclude, that to conform to the constitution, the clerks of the Circuit Court elected by the people, are entitled to a full term of four years, and not to be regarded as filling a vacancy of any shorter period.”

1956 O. A. G.

It is, therefore, my opinion from the cases cited and the observations set out above, that the present Coroner is one who was elected to fill a vacancy in the constitutional office and is entitled to the full term and he should not run for re-election in the year 1956, and the term of his office runs for four years from the date his term of office began following the 1954 election and until his successor is elected and qualified.

OFFICIAL OPINION NO. 14

March 27, 1956

Mr. J. Otto Lee, Clerk
State Election Board
102 North Senate Avenue
Indianapolis 4, Indiana

Dear Mr. Lee:

I have received your letter of March 12, 1956, raising the following question:

“The present Coroner of Cass County has been consecutively elected to the said office over a period of many years, having been elected consecutively every two years when the office was a two-year office.

“The said Coroner was last elected on November 4, 1952, and on December 31, 1956, will have served a term of four years, pursuant to the then enacted referendum extending the term of the office of the Coroner from two to four years.

“Question: Under the existing election code, is the said Coroner eligible to again file his declaration for nomination to the office of Coroner, which if successful in the Primary and General elections would entitle him to another four-year term in office, or eight consecutive years service since the enacted referendum.”

“Since this involves an important constitutional office and entitlement to office, the State Election Board respectfully requests an official opinion.”

The constitutional amendment to the Indiana Constitution,