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,

Art. 6, Sec. 2, by the voters at the 1952 election, reads as follows:

> "There shall be elected, in each county by the voters thereof, at the time of holding general elections, a Clerk of the Circuit Court, Auditor, Recorder, Treasurer, Sheriff, Coroner and Surveyor. The Clerk, Auditor, Recorder, Treasurer, Coroner and Surveyor shall continue in office four years; and no person shall be eligible to the office of Clerk, Auditor, Recorder, Treasurer or Coroner more than eight years in any period of twelve years; Provided, That the Treasurer of each county re-elected at the general election in 1952 shall continue in office until January 1, 1957, and shall not be eligible for re-election to the office of County Treasurer at the general election in 1956."

It is my opinion that your situation is controlled by the case of Pommerehn *et al.* v. Sauley (1954), 233 Ind. 140, 117 N. E. (2d) 556. Inasmuch as the opinion in that case is quite short, and all of the language has bearing on the situation here, I am setting out the whole of the decision as follows:

> "FLANAGAN, J.—On November 2, 1948, the following amendment to the Constitution of this State became effective:
>
> > " 'Notwithstanding any other provision hereof, the sheriff of each county shall be elected in the general election held in the year 1950 and each four years thereafter. The term of office of each such sheriff shall be four years beginning upon the first day of January next following his election and no person shall be eligible to such office more than eight years in any period of twelve years: Provided, however, that any elected sheriff who shall hold said office on December 31, 1950, and who shall have been elected to said office for a period of less than two consecutive years immediately preceding, shall continue in said office for the four year term commencing January 1, 1951.'

"It should be noted that this amendment started the terms of office created by it as of January 1, 1951.

"Appellee was sheriff of his county prior to that date and has continued to be to the present time. He raises the question as to whether 'eight years in any period of twelve years,' in the above-quoted amendment, refer only to years after January 1, 1951, or whether such eight years include years prior to that date.

"If the 'eight years in any period of twelve years' include those years immediately prior to January 1, 1951, appellee is not eligible to be a candidate in the primary and general election of 1954.

"An amendment becomes a part as fully as any original provision. The question here asked is not as to time, but rather is one as to effect. Are provisions of the Constitution prospective only, or are they also retrospective? The fundamentals welcome search.

"A constitutional provision should have its feet founded deeply in the wisdom of the past; but its voice can speak only to the future. That which happened before adoption gave it breath it cannot notice. That which happened afterward demands its attention.

"In the instant case it is immaterial whether appellee did or did not serve as sheriff prior to January 1, 1951. On that date a new term of office started under a new constitutional provision.

"Whether appellee was a sheriff under a different constitutional provision calls for no notice. Since January 1, 1951, the present Constitution governs. Appellee is entitled to be a candidate under it."

The only difference, in effect, between the amendment which concerned the Court in the Pommerehn case, *supra,* and the amendment which gives rise to your question, is that the former specifically stated when the new term was to begin; that is, on January 1, 1951.

The amended Indiana Constitution, Art. 6, Sec. 2, *supra,* with which we are concerned contained no such specific date of the beginning of the term.

It was pointed out by the Court in Kirkpatrick v. King *et al.* (1950), 228 Ind. 236, 91 N. E. (2d) 785, wherein it was said at page 244:

> "Moreover, the appellant was not elected sheriff prior to the adoption of the constitutional amendment. In contemplation of law he was elected at 6 o'clock P. M. at the time the polls closed. (Citations omitted.) But the amendment was adopted at the same time, and his rights as a public officer were limited by the superior force of the constitution effective at the time of his election."

I am of the opinion, therefore, that the specification of a beginning date of a term of office in the amendment to the Indiana Constitution, Art. 6, Sec. 11 presumably served only to:

> "* * * establish a definite uniform cycle for the beginning and ending of all such terms throughout the state."
>
> Kirkpatrick v. King *et al., supra,* at page 243.

I am likewise of the opinion that where, as in the instant situation, the constitutional amendment does not speak on the beginning date of the new term, that the new term will commence at the expiration of the prior term, and no definite and uniform cycle for such terms is established throughout the State.

Therefore, the inclusion or absence of a beginning date in an amendment is not a controlling factor in this situation.

In accordance with the foregoing discussion, I conclude that the Pommerehn case, *supra,* controls in the case of a County Coroner, and any terms of office held by the present Coroner prior to the taking effect of the constitutional amendment to the Indiana Constitution, Art. 6, Sec. 2, are not to be considered in determining whether said Coroner has served more than eight years in any period of twelve years.

I am, therefore, of the opinion that the Coroner about whom you inquire is eligible to run for and, if elected, serve another term in office.