the remaining trustees shall, at their next regular meeting, or at a special meeting called for that purpose, elect a successor to fill such vacancy for the remainder of the unexpired term.”

In the case of State ex rel. Fares v. Karger (1948), 226 Ind. 48, 77 N. E. (2d) 746, at page 48 of the original opinion the Indiana Supreme Court quotes from, approves and applies the statement of said Supreme Court taken from the case of State ex rel. Culbert v. Linkhauer (1895), 142 Ind. 94, 41 N. E. 325, as follows:

“‘After the expiration of the term fixed by the General Assembly, the tenure, or title of the officer is not under or by virtue of legislative authority, but by the continuing and superior authority of the Constitution. (Authorities.) The effect of the constitutional provision is to add “an additional, contingent and defeasible term to the original fixed term, and excludes the possibility of a vacancy, and consequently, the power of appointment, except in case of death, resignation, ineligibility or the like.”’” [Citations omitted]

Under the foregoing authorities it is clear the incumbent member of the board holds over; that there is, therefore, no vacancy in the office and consequently, no authority exists for the remaining members of the board to appoint a successor in place of the person who so died.

Your first question is therefore answered in the negative and your second question in the affirmative.

OFFICIAL OPINION NO. 4
March 24, 1955

Mr. Wilbur Young
State Superintendent of Public Instruction
State House
Indianapolis, Indiana

Dear Sir:

Your letter has been received requesting an Official Opinion as to the following:

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"The Greene County Board of Education at their regular meeting December 13, 1953 passed the following Resolution:

"That it is necessary to employ a clerical assistant to assist the Board in the proper administration and supervision of the Greene County Schools."

"Ten of the fifteen board members were present and all ten of them voted yes and signed the resolution.

"A written contract was entered into designating January 1, 1954 as the starting time of the contract and the salary was fixed at $2,400 per year, payable $200 per month.

"Question: Is it mandatory upon the County Council to appropriate the amount fixed by the County Board of Education for the Clerical Assistant to assist the Board in the proper administration and supervision of the Greene County Schools ($2,400 per year payable at $200 per month)?"

Acts of 1951, Ch. 164, Sec. 1, as found in Burns’ Indiana Statutes (1948 Repl., 1953 Supp.), Section 28-804a, provides in part as follows:

"The county board of education shall enter into a written contract with such additional administrative and supervisory employees who shall serve the township schools of the county as shall, in the judgment of two-thirds of the members of said board, be necessary for the proper administration and supervision of the county school system. Funds for the salaries of such persons and supplies for such persons’ use shall be provided in the same manner as now provided by law for the fixing and appropriation of the salaries of the county superintendent of schools. * * *

Acts of 1933, Ch. 21, Sec. 14, as found in Burns’ Indiana Statutes (1951 Repl.), Section 49-1014, provides that the salary of the County Superintendent of Schools may be increased by a majority of the township trustees to such an amount as may seem proper “and the county council shall appropriate and the board of county commissioners shall allow
the necessary funds to pay such increase in the salary of the county superintendent.”

In the case of Hamilton County Council et al. v. State ex rel. Groff (1949), 227 Ind. 608, 615, 87 N. E. (2d) 810, the Supreme Court held in determining the requirement of the county council to appropriate a salary fixed for the County Superintendent of Schools under the above Act as follows:

“* * * Since the controlling amendment of 1939 removed all discretion from the county council and made its duty mandatory to make the appropriation for the increased salary, and likewise made it a mandatory duty of the Board of Commissioners to allow the funds to pay the increase, neither of these authorities act judicially in the matter. On the contrary they act only as auditing authorities, with their duty predetermined by the legislature.”

In the foregoing Supreme Court decision the Court held that the salary there involved must be appropriated for the entire two and one-fourth (21/4) years where the county council had failed and refused to do so from the time the notice of the increase in salary was filed with the County Auditor.

From the foregoing, I am of the opinion that such clerical assistant’s salary must be fixed by the County Board of Education, and that it is mandatory on the county council to appropriate and the Board of County Commissioners to allow the necessary funds to pay the same.

From the facts stated in your letter, the resolution was passed on December 13, 1953, and the contract entered into effective January 1, 1954, and therefore it is my opinion that it is mandatory to appropriate such funds for the payment of such salary beginning January 1, 1954. Under the decision of Hamilton County Council et al. v. State ex rel. Groff, supra, I am of the opinion it is mandatory to pay such back salary from the time the notice of the fixing of said salary was given by the County Board of Education to the county council by filing a notice thereof either with county council or with the County Auditor, who is, under said decision, the clerk of the county council.

The foregoing is conditioned upon the fact that such notice was so given, which fact was not referred to in your letter.