

## OPINION 58

such an elevator up to standard, except as the remedy exists as to all existing elevators regardless of the time or conditions under which they were originally installed.

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### OFFICIAL OPINION NO. 58

August 20, 1952.

Mr. Edwin K. Steers, Sr.,  
108 East Washington St.,  
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion on the term of an appointee to fill a vacancy as Clerk of the Circuit Court. You accompany your request with a letter from same appointee which states the facts as follows:

"At the general election of 1950, Carl A. Smith was elected on the Republican ballot to the office of Clerk of the Jay Circuit Court and on January 1, 1952, Carl A. Smith qualified and acted as Clerk for approximately twenty-four hours. On January 2, 1952, he gave his resignation to the Board of Commissioners of Jay County.

"I, Dohrman Brotherton, on January 2, 1952, made application for the Office of Clerk of the 58th Judicial Circuit of the State of Indiana, and received my appointment and commission as Clerk of the 58th Judicial Circuit of the State of Indiana comprising Jay County dated January 7, 1952, to serve as such until my successor is duly elected and qualified, signed by Governor Henry F. Schricker and Secretary of State Leland L. Smith."

In the case of *Enmeier v. Blaze* (1931), 203 Ind. 475, 481, 181 N. E. 1, the Supreme Court of this state had before it the question of the validity of the statute seeking to delay the beginning of the term of certain constitutional offices in order to provide uniformity of succession of office.

The court in holding that that statute was in violation of the constitution as it applies to clerks of the circuit court said:

“\* \* \* The spirit of the Constitution is to avoid vacancies in the office of clerk of the circuit court, as well as vacancies in the other offices named in Art. 6, § 2; and to avoid, as far as possible, the necessity of filling vacancies in office by appointment; and also, to avoid holding over by an elected officer, after the expiration of the term of office, except and until his successor shall have been elected and qualified. (Art. 15, § 4, Constitution.) \* \* \*”

There have been a number of cases construing Section 7 of Chapter 115 of I R. S. 1852, same being Burns' 49-409, which provides that every person elected to fill any office shall hold it for the unexpired term thereof. This statute has been repeatedly held invalid in as far as it applies to appointees to fill vacancies in constitutionally created offices. See:

Lake County Election Board v. State *ex rel.* Eyears (1946), 224 Ind. 465, 468, 68 N. E. 2d 787;

Weaver v. State *ex rel.* Sims (1899), 152 Ind. 479, 53 N. E. 450.

See also 1948 O. A. G. 75 and Official Opinion No. 28 of this year.

Section 1 of Chapter 18 of the Acts of 1929, same being Burns' 49-2702 provides specifically that persons appointed to fill vacancies in the office of Clerk of the Circuit Court shall hold for the unexpired portion of that term. This is manifestly subject to the same infirmity, the statute on changing the beginning of terms and the general statute on the subject of the duration of terms are. Therefore, on the basis of the authority heretofore cited, it is my opinion that pursuant to constitutional mandate it is proper for an election for clerk to be held in Jay County in the 1952 general election.