

1952 O. A. G.

OFFICIAL OPINION NO. 72

December 1, 1952.

Mr. Sam J. Bushemi,
State Representative,
3500 Connecticut Street,
Gary, Indiana.

Dear Mr. Bushemi:

I have your request for an official opinion in which you ask when the County Surveyor and County Coroner elect will begin their respective four year terms and whether these officials are entitled to second and successive terms.

The recent Constitutional Amendment concerning these officers appears in Section 2, Chapter 337 of the Acts of 1951 and reads as follows:

“Section 2 of Article 6 of the Constitution of the State of Indiana is amended to read as follows: Sec. 2. 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.”

You will note that this provision is silent as to when the terms of coroner and surveyor begin. Generally an officer is elected for a set term and until his successor is elected and qualified.

See Article 15, Section 3, Indiana Constitution. Generally an election is held to fill all offices in which a vacancy has occurred or in which the term has expired or will expire before the next general election. See Burns' 29-4801.

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There have been a number of statutes passed by the General Assembly seeking to regularize the beginning of terms of constitutional officers. Section 1, Chapter 159 of the Acts of 1929, same being Burns' 49-207 is one of these acts and reads as follows:

"The term of office of the county auditor, clerk of the circuit court, county sheriff, county recorder, prosecuting attorney, county assessor, county coroner, county surveyor, and county commissioners, in each county in the state of Indiana, shall begin on the first day of January next following the term of office of the present incumbent."

In the case of *Enmeier v. Blaize* (1931), 203 Ind. 475, 181 N. E. 1, this act was held unconstitutional as it applies to Clerks of the Circuit Court because it would delay the beginning of the terms of certain clerks until after the next general election thus delaying the time for election of their successors.

It appears that this statute has not been construed in regard to the possible application of it to the offices of coroner and surveyor. An examination of the specific statute referring to the coroner failed to show any special provision for the beginning of the terms of coroner.

In regard to surveyors 1 R. S. 1852, Chapter 301, Section 1, same being 49-3301 provides that the county surveyor shall begin his term on the first Monday in November after his election. The validity of this statute has not been the subject of litigation.

In view of these authorities and the *Enmeier Case* in particular it is my opinion that the officers to whom you refer will assume office at the expiration of the term of their predecessor that is, to say that if they succeed an officer elected in the past they will begin their office two years from the time their predecessor began his term and if they are succeeding a person holding the office by appointment their terms will begin whenever they qualify.

The Constitutional provision in question provides that the coroner shall not serve more than eight years in any period of twelve years. Thus if a county coroner to whom you refer is being elected for the first time, he will be eligible to suc-

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ceed himself for a second four year term. This Constitutional provision contains no limitation on the period that a surveyor may continue in office. Therefore, it is my opinion that a surveyor may succeed himself any number of times.

OFFICIAL OPINION NO. 73

December 8, 1952.

Mr. Joe W. Green,
State Veterinarian,
Indiana State Livestock Sanitary Board,
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

“A question has arisen with respect to the matter of issuing quarantines by this Division of State Government, concerning which an official opinion is respectfully requested.

“The question presented for determination is whether or not it is necessary to follow the procedure set out in Chapter 365, Acts of the 1947 General Assembly, known as the ‘Administrative Adjudication Act’ or whether the broad power to establish quarantines as set out in Chapter 80, Acts of the 1951 General Assembly (section 151) is sufficient to warrant the issuance of quarantines in such cases as are deemed necessary for the prevention, suppression, control and eradication of communicable diseases affecting the health of domestic animals within and in transit through the state.

“The sections of the two statutes, concerning which the question has arisen as to which is controlling are set forth as follows:

“Section 5, Chapter 365, Acts of 1947
“Whenever the law applicable to the particular agency authorizes such agency to make investigations or inspections it may make the same as