

a "trained attendant." \* \* \* This act shall not be construed to affect or apply to gratuitous nursing of the sick by friends or members of the family, and also it shall not apply to any person nursing the sick for hire who does not in any way assume to be a "trained attendant".'

The above statute requires that your Board first determine the standards for courses given in such schools and then recognize or approve such school meeting such standards. After this has been done, a person having a certificate showing the completion of such course may qualify for the practical examination by the Board and receive the Board's certificate as a "trained attendant." This, of course, would be available to practical nurses as well as any other person, but all must so qualify.

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OFFICIAL OPINION NO. 79

December 31, 1947.

Mr. Edwin Steers, Sr., Member,  
State Board of Election Commissioners,  
108 East Washington Building,  
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of December 24, 1947, attaching a copy of letter received from the City Attorney of Noblesville, Indiana, which gives the facts of the situation. The facts as stated are that the gentleman who was elected mayor of the City of Noblesville, Indiana, at the past election died Sunday, December 21, and although elected he did not qualify as required by law. You request an official opinion: Does the present mayor hold over?

It has been repeatedly held by our Supreme Court that "The prescribed tenure of any office under the Constitution, or any law, other than a member of the General Assembly" shall be construed to mean that such officer shall hold his

office for such a term and until his successor shall have been elected and qualified.

Spencer v. Knight (1912), 177 Ind. 564;  
 State *ex rel.* v. Menaugh (1898), 151 Ind. 260, 51  
 N. E. 113;  
 Scott v. State *ex rel.* Gibbs (1898), 151 Ind.  
 556, 52 N. E. 163;  
 Koerner v. State *ex rel.* (1897), 148 Ind. 158 at  
 166-167.

In the case of State *ex rel.* Jett v. Ives (1906), 167 Ind. 13, 78 N. E. 225, it was held that under the provisions of the Constitution that officers holding an office for a given term shall continue in office until their successors have been elected and qualified applies to municipal officers. Likewise, it has been held by our Supreme Court that if a person elected to an office dies before he qualifies, his death does not create a vacancy to be filled by appointment but the incumbent of the office holds over until a successor is elected and qualified.

Kimberlin v. State *ex rel.* Tow (1891), 130 Ind.  
 120, 29 N. E. 773;  
 Gosman v. State *ex rel.* Schumacher (1885),  
 106 Ind. 203.

It was further held in the case of Gosman v. State *ex rel.* Schumacher, *supra*, at page 206, the court said:

“The right to hold over is not defeated or terminated by the election of a successor. The successor must have been elected and qualified. \* \* \* Election and qualification are essential to vest the right to the succeeding term in the officer elect. Until these occur it remains contingently in the incumbent, and while an existing title remains in him no vacancy exists. \* \* \*”

It is therefore apparent from such holding of our Supreme Court that the present mayor for the City of Noblesville holds over and such is my opinion, assuming of course, that the gentleman elected mayor at the past election died before being qualified.