STATE BOARD OF ELECTION COMMISSIONERS: Elections—Ballots—filling vacancies—putting substitute candidate's name on ballot.

September 12, 1944.

Opinion No. 84

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

Dear Mr. Steers:

I have your letter of September 6th, 1944, which is as follows:

"The question has arisen as to whether or not in case of a vacancy caused by death or resignation of a candidate after his name has been printed on the war ballot and before the printing of the regular ballots, if the name of the candidate for the office so made vacant should be printed on the regular ballot or the name of the person who has been selected to fill the vacancy. We would be pleased to have your official opinion on this question."

The election laws provide for filling vacancies caused by resignation, death and for other reasons. Section 29-1012, Burns' R. S. 1933, is as follows:

"When, as a result of a withdrawal or withdrawals, or for any other reason, there is no candidate for any office, either for nomination by the primary, or as a candidate for office at the general election, the vacancy shall be filled in the manner following:

"Vacancies for county offices shall be filled by the county central committee; vacancies for city offices by the city central committee; vacancies for the office of prosecuting attorney, judge, representatives in the general assembly or state senator, by the county central committees of all of the counties of the district acting jointly; vacancies for representative in congress, by the congressional district committee; and the vacancies for United States senator or any officer elected by all
the voters of the state by the state central committee of
the party in which such vacancy shall have occurred.”

Section 29-1108 is as follows:

“In case of the death, removal or resignation of any
candidate after the printing of such ballots and before
such election, it shall be lawful for the chairman of the
state, district or county political organization of which
such candidate was a member to make a nomination
to fill such vacancy, and to provide the election board
of each precinct in which such candidate is to be voted
for with a number of pasters containing only the name
of such candidate at least equal to the number of bal-
lots provided each precinct, but no pasters shall be
given to or received by any one except such election
board and such chairman, and it shall be the duty of
the polling-clerks to put one (1) of such pasters, in a
careful and proper manner and in the proper place, on
each ticket before they shall sign their initials thereon.”

Section 8 of the Henley-Van Ness Act of 1944, commonly
known as the War Ballot Act, provides in part as follows:

“* * * No party, no candidate for any party except
one nominated to fill a vacancy as hereinafter provided,
no independent candidate, and no independent party
shall be placed upon any local, state or national ballot,
whether said ballot be a war ballot or one as otherwise
provided by law, or upon any voting machine, to be
used in any general election, unless he shall have been
nominated, certified or duly filed as required by law,
on or before the first day of August preceding the gen-
eral election.”

Section 20 of said act is as follows:

“In the event there should occur any vacancy for any
office on any ballot, as is otherwise provided by law
concerning vacancies, such vacancy may be filled as is
is now provided by law, and if the name of any candi-
date becoming vacant is not replaced by another candi-
date before the war ballot is mailed by the clerk, a vote
by the absent voter on a war ballot for said vacancy
candidate shall be considered a vote for his successor nominated in his place.”

Under these sections if there is a vacancy in any office at the close of the first day of August preceding the general election by reason of the fact that no candidate has been nominated or selected for that office, then there is no such vacancy as can be thereafter filled as provided by law. This would not apply to vacancies caused by the death or resignation of the holder of an office for which there would otherwise be no candidate voted on at that general election. However, if there is a candidate for the office on August first and thereafter a vacancy occurs by reason of resignation, death or otherwise, such a vacancy may be filled as provided by law.

It is provided by Section 29-1011, Burns’ R. S. 1933, that resignations must be filed not less than thirty (30) days immediately preceding an election. However, there is no limit as to when a vacancy caused by death may be filled other than the ability to comply with the statutory method before the polls open.

It would seem apparent from the statute that it was the intention of the Legislature that the name of the candidate actually to be voted for be on the ballot even when such candidate has been selected, as provided by law, to fill the vacancy after the ballots were printed, by use of a paster. Where the vacancy is filled before the regular ballots are printed it certainly would not be contemplated that the name of the deceased or resigned candidate be printed on the ballot and then a paster be prepared and put over his name by the polling-clerks.

Section 20 of the War Ballot Act, above quoted, contemplates that the name of the candidate filling the vacancy be placed on the regular ballots and since it could not be placed on the war ballots provision is made for a vote for the vacancy or replaced candidate being a vote for his successor. In other words the section replaces the name of the vacancy candidate with the name of the successor candidate by operation of law and makes it conform to the regular ballot.

It is my opinion that in case of a vacancy caused by death, resignation or otherwise of a candidate, after his name has been printed on the war ballot, and before the printing of the regular ballot, the name of the person selected, as provided
by law, to fill the vacancy should be printed on the regular ballot. The war ballot act then makes the war ballot conform by putting the name of the successor candidate on the war ballot by operation of law.

ACCOUNTS, BOARD OF: Armory Board—Military funds—Method of handling and disbursing certain funds—Canteen etc. funds—History and status of Armory Boards, State and local.

September 25, 1944.

Opinion No. 85

Hon. Otto K. Jensen,
State Examiner,
Department of Supervision of Public Offices,
State House,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of August 11th, in which you request my opinion upon the following questions:

"1. Do local armory boards have any legal existence other than as agents of the state armory board?

"2. Is the state armory board and/or local armory boards required to pay into the state treasury amounts received as rentals, income, earnings and all other receipts of whatsoever character, accruing to the state treasury by virtue of the operation of the state armories?

"3. Does the provision of the statute that all expense incurred in the operation of state armories shall be paid out of the rentals, income, earnings and any and all other receipts of whatsoever character, operate as an appropriation of such receipts for the payment of the expenses incurred in the operation of the state armories?

"4. Is the state armory board and/or local armory boards authorized to pay the expenses incurred in the operation of state armories in any manner other than