TAX COMMISSIONERS, STATE BOARD OF: Township assessors appointed to fill vacancies, when term expires.

August 18, 1939.

Hon. Edw. D. Koenemann, Secretary,
State Board of Tax Commissioners,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion predicated upon the facts set out in your letter as follows:

"The Calumet Township Assessor of Lake County, Indiana, died in February, 1939, subsequent to his election in November, 1938. A successor was appointed with the approval of the State Board of Tax Commissioners, as provided by law."

Your question is as to when the term of office of the appointed successor will expire.

Under date of April 25, 1924, the same type of question was submitted to the Attorney General with respect to a township assessor appointed to fill a vacancy occurring after the election in 1922, the particular question being as to whether the successor of the appointed assessor should be chosen at the general election in 1924 or at the general election in 1926.

Basing his opinion upon the same statute as is in existence at the present time, the Attorney General held that persons appointed to serve in the place of assessors elected in 1922 may hold office until January 1, 1927.


I concur in that opinion, which, as applied to your question, would mean that the Assessor of Calumet Township, Lake County, appointed to fill the vacancy caused by the death of the elected assessor in 1939 would hold office until January 1, 1943. In other words, a successor would not be elected in 1940 but in 1942.

There are four applicable statutes:

First, section 29-1901, Burns Indiana Statutes Annotated, June 1939, Cumulative Pocket Supplement, provides as to when township officers shall be elected and likewise as to the term
of office of such officers. This section is an amendment of section 1 of chapter 236 of the Acts of 1933. The sole change brought about by the amendment is in the language fixing when the terms of office of such officers shall begin. The 1933 Act had provided that they should begin on the first Monday of January succeeding the election of such officers. This was out of harmony with the provision of section 134 of the Tax Law of 1919 as amended in 1921, which provided that the term of office of township assessors should begin on the first day of January following their election. The amendment in 1935 of the 1933 Act, as embodied in section 29-1901, supra, was to make the time for the beginning of the term conform with the provisions of section 134 of the Tax Act, supra.

Second, section 64-1001 of Burns Indiana Statutes Annotated (1933), the same being section 134 of the Tax Act of 1919, as amended in 1921, provides for the election of township assessors at the general election on the first Tuesday after the first Monday in November in the year 1922 and at the general election on the first Tuesday after the first Monday in November every fourth year thereafter. The section also provides for the filling of vacancies, lodging that duty in the county auditor, subject to the approval of the State Board of Tax Commissioners.

Third, section 49-405 of Burns Indiana Statutes Annotated (1933) provides that the Board of County Commissioners shall fill all other vacancies in county or township offices other than those provided for in the four preceding sections, except such township or other offices the vacancies in which are otherwise provided for. This section provided that the appointment by the Board of County Commissioners "shall expire when a successor is elected and qualified, who shall be elected at the next general or township election, as the case may be, proper to elect such officers." I have referred to this section because it specifically provides that the appointments made thereunder "shall expire when a successor is elected and qualified, who shall be elected at the next general or township election, as the case may be, proper to elect such officers." This provision, however, does not apply to township assessors under the present law for the obvious reason that the appointment of a township assessor to fill a vacancy is not made by the Board of County Commissioners.

Fourth, section 49-409 of Burns Indiana Statutes Annotated (1933), provides as follows:
“Every person elected to fill any office in which a vacancy has occurred shall hold such office for the un-expired term thereof.”

In the case of Carson v. State, ex rel., Bath, 145 Ind. 348, at page 350, the court in discussing the above provision said:

“It is evident, from an examination of the title and body of this Act, that this section applies to all appointments made to fill vacancies in the offices created by the legislature, when no different provision therefor is made by the constitution or statute, whether such appointment is made by a single person or by the people at an election, or by any other body, as the legislature, the common council of a city, trustees of a town, or board of commissioners of a county.”

Upon that basis, the court held that a person elected by the Common Council of the City of Tipton to fill out the vacancy in the office of an elected treasurer of the City of Tipton held for the entire unexpired term of the elected treasurer. It seems to me that the same rule would apply in this case, and I so hold.

FIRE MARSHAL, STATE: Fireworks displays, bond of licensee for damages, whether insurance policy sufficient.

August 28, 1939.

Mr. Clem Smith,
State Fire Marshal,
Indianapolis, Indiana.

Dear Mr. Smith:

I have your letter of August 22, 1939, relative to section 3, chapter 154, Acts of 1939.

You submit the following questions for an official opinion:

“It has been brought to my attention that as a matter of practice manufacturers of fireworks and those who present large displays carry property damage and public liability insurance, and also as a matter of common practice, prior to each display they have a rider placed on their policies giving the same coverage to the sponsors of the display. Where these conditions are