vacancy occurs, since one of the contingencies upon which the incumbent's term of office is to expire has not taken place, namely, the qualification of a successor."

In answering your second question, I call attention to the following language from the same case, quoting from page 125:

"The weight of authority is that where there exists a constitutional provision such as we are now considering, a term of office fixed by statute runs not only for the period fixed, but for an additional period between the date fixed for its termination and the date at which a successor shall be qualified to take the office. The period between the expiration of the term fixed by statute and the time at which a successor shall be qualified to take the office is as much a part of the incumbent's term as the fixed statutory period."

Upon the basis of the above language it apparently would not be necessary for the present incumbent to take the oath of office over again, but I recommend that it should be done and a new bond filed. Under present laws the hold over trustee will, in my opinion, continue in office until his successor is elected and qualified.

ACCOUNTS, STATE BOARD OF: Cost bond of non-resident plaintiff in civil action, when clerk may release.

January 5, 1939.

Hon. Edward C. Brennan,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me the request of your predecessor for an official opinion in answer to the following question:

"In cases where a non-resident plaintiff in a civil action posts a cost bond with the clerk of the circuit court, and the judgment for the costs is against the defendant, should the clerk hold the cost bond until the costs are paid, or can same be returned to the plaintiff?"
In my opinion, the clerk should hold the cost bond until the costs are paid.

Section 2-4708 of Burns Indiana Statutes Annotated (1933) provides, in part, as follows:

"Plaintiffs who are not residents of this State, before commencing any action, shall file in the office of the clerk a written undertaking, payable to the defendant, with surety to be approved by the clerk, for the payment of all costs which may accrue in the action to the proper officer or person."

Burns Indiana Statutes Annotated (1933) Section 2-4708.

While the undertaking referred to is to be payable to the defendant it is evidently intended to inure to the benefit of the proper officer or person in whose behalf the costs accrue. Theoretically, each party to the litigation is presumed to have paid his own costs as they accrue (Taylor v. Wright, 93 Ind. 121) and the provision of the statute providing that in all civil actions the party recovering judgment shall recover costs except in those cases in which a different provision is made by law (Burns Indiana Statutes Annotated (1933) Section 2-3001) is upon the theory that the winning litigant should recover from the losing litigant the costs which such winning litigant has either paid or has become liable for.

The statute requiring a non-resident to give a cost bond is "for the payment of all costs which may accrue in the action to the proper officer or person." It is apparent, however, that such litigant's recovery of a judgment against the defendant does not discharge this obligation. It cannot, in my opinion, be discharged short of full payment by someone of the costs to secure which the bond was given.