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OFFICIAL OPINION NO. 34

December 18, 1975

The Honorable Richard E. Shank
Indiana State Representative
Rural Route No. 1, Box 337-L
Elkhart, Indiana 46514

Dear Representative Shank:

This is in response to your request for an opinion as to whether a person appointed to fill a vacancy in the office of county sheriff serves for the full unexpired term of his predecessor or whether he or she serves only until the following general election.

ANALYSIS

The facts giving rise to your question concern the office of sheriff in Elkhart County where Edward N. Robinson was elected to serve a four year term beginning January 1, 1975 but died on August 30, 1975. The resulting vacancy was filled by the county commissioners on September 5, 1975. That action was authorized by Indiana Code of 1971, section 5-9-1-2 which provides the following:

“The board of county commissioners shall fill all other vacancies in county or township offices, except justices of the peace, and such township or other offices the vacancies in which are otherwise provided for, and such appointment 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.”

Your question asks, in essence, when the “next general election . . . proper to elect” a sheriff in Elkhart County will occur.

In Official Opinion No. 55 of 1952, then Attorney General McManamon, in answer to that question, concluded that a person appointed to fill a vacancy in the office of sheriff would

serve for the full unexpired term of his predecessor and that no election for sheriff would be held at an intervening general election. For the reasons noted hereafter, that opinion still correctly states the applicable law. Interestingly, almost identical factual situations raising the same legal issue twice have been before the Indiana Supreme Court subsequent to that Official Opinion. However, in both instances, the Court split 2-2 and thus upheld the lower court.

In *State ex rel. Thomas v. Williams* (1958), 238 Ind. 407, 151 N.E. 2d 499, a sheriff elected in 1954 died August 24, 1956, just before the 1956 general election. Although the county commissioners filled the vacancy by appointing appellant Thomas, the office of sheriff appeared on the 1956 general election ballot and Appellee Williams was elected. The split decision of the Supreme Court let stand the trial court's decision that the elected sheriff, Williams, properly held office.

In *Haggerty v. Marion County Election Board* (1964), 245 Ind. 565, 201 N.E. 2d 274, a sheriff elected in 1962 died September 27, 1963, over a year before the next general election. The county commissioners filled the vacancy. When the county election board refused to place the office of sheriff on the 1964 general election ballot, appellant sued to compel the board to take that action. The split decision of the Supreme Court let stand the trial court's decision that the appointed sheriff serves for the full unexpired term of his predecessor.

The office of sheriff is a constitutional office. Article 6, section 2 of the Constitution of Indiana provides, in part, the following:

“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.”

It is true that, as a general policy rule, opportunity should be given for the public to fill vacancies in constitutional offices by election whenever such elections properly can be held. See *Lake County Election Board v. State ex rel. Eyears* (1946), 224 Ind. 465, 63 N.E. 2d 787, which holds that where a va-

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cancy occurs in the office of county auditor, a successor must be elected at the next general election to a four year term, even though the cycle begun by his predecessor may be broken. The reason that the general policy of filling vacancies by immediate election can be given effect with respect to the office of auditor is that article 6, section 2, though it does require a four year term for persons elected auditor, does not establish a definite cycle of election for that office.

With respect to the office of sheriff, however, the Constitution itself specifically establishes a four-year cyclical scheme which is not provided for other county officers; and it provides that the term of the sheriff shall be four years. Article 6, section 11, which was added to the Constitution in 1948, provides the following:

“Notwithstanding any other provision hereof, the Sheriff of each county shall be elected in the general election held in the year 1950 and each four years thereafter. The term of office of each such Sheriff shall be four years beginning the first day of January next following his election and no person shall be eligible to such office more than eight years in any period of twelve years: Provided, however, that any elected Sheriff who shall hold said office on December 31, 1950, and who shall have been elected to said office for a period of less than two consecutive years immediately preceding, shall continue in said office for the four year term commencing January 1, 1951.”

The provisions that the terms of sheriffs be four year terms and that those terms be computed from January 1, 1951, can be given effect only if a person appointed to fill a vacancy in the office of county sheriff serves the full unexpired term of his predecessor. As noted in *Kirkpatrick v. King* (1950), 228 Ind. 236, 243, 91 N.E. 2d 785, 788, the reason for the adoption of article 6, section 11 was to establish “a definite uniform cycle for the beginning and ending of all such terms throughout the state.” In accordance with the cycle thus established, a new term does not commence until January 1, 1979. And to elect a sheriff in 1976 to serve a two year term

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would violate the four year term provision of article 6, section 11.

CONCLUSION

For the reasons noted herein and because of the effect of the most recent decision of the Indiana Supreme Court in the Haggerty case, *supra*, it is my Official Opinion that a person appointed to fill a vacancy in the office of county sheriff serves for the full unexpired term of his predecessor. Therefore, the next election proper to elect a new county sheriff in Elkhart County is the 1978 general election.