

1970 O. A. G.

OFFICIAL OPINION NO. 5

April 9, 1970

Hon. William E. Lapar
131 N. Meridian Street
Winchester, Indiana 47394

Dear Representative Lapar:

This is in response to your request for my Official Opinion concerning the eligibility of a person who filled the office of county recorder from January 1, 1961, through December 31, 1968, to run for that office in the general election of 1970. You explain that the recorder elected in 1968 died shortly after taking office and that the office is presently occupied by an appointee.

ANALYSIS

Article 6, Section 9, of the Indiana Constitution provides that: "The vacancies in county, township, and town offices shall be filled in such manner as may be prescribed by law."

Pursuant to the authority granted by that section, the Indiana General Assembly has enacted R. S. 1852, Ch. 115, Sec. 4, as found in Burns' (1964 Repl.), Section 49-405, which provides in part:

"The board of county commissioners shall fill all of the vacancies in county or township offices, except * * * 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, proper to elect such officers."

While it is possible for special provisions to be made for a particular office [See 2 R. S. 1852, Ch. 5, Sec. 1, as found in Burns' Section 49-2701, which relates to the clerks of the circuit court and was interpreted and implied by the Supreme Court in Marion County Election Board v. O'Brien (1960), 241 Ind. 36, 169 N. E. (2d) 287], I can find no such exception concerning the office of county recorder.

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Therefore, the office of county recorder must be filled by election in the 1970 general election, as your letter indicates, and the person winning that election is to assume office on January 1, 1971, pursuant to Acts of 1929, Ch. 58, Sec. 1, as found in Burns' Section 49-207.

Article 6, Section 2, of the Indiana Constitution provides in part:

“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. The Clerk, Auditor, Recorder, Treasurer, Coroner and Surveyor shall continue in office four years; and no person shall be eligible to the office of Clerk, Auditor, Recorder, Treasurer or Coroner more than eight years in any period of twelve years * * *”

The completion of the eighth year of holding office has been held to be a complete bar to the holding of that office during any part of the remaining four years in that twelve year period. For example, in *Gosman v. State* (1886), 106 Ind. 203, 6 N. E. 349, the Supreme Court held that when a clerk-elect died before qualifying for office, the incumbent clerk could not continue in office more than eight successive years despite the specific Constitutional provision (Art. 15, Sec. 3) that the term of office of an officer “shall be construed to mean, that such officer shall hold his office for such term, and until his successor shall have been elected and qualified.” See also: 59 A. L. R. (2d) 716.

CONCLUSION

It is my opinion, therefore, that a person who served as county recorder during the years 1961 through 1968, inclusive, is not eligible to hold that office again until January 1, 1973, and is ineligible to be a candidate for any term that would commence prior to that date.