ELECTIONS—Recalling Ballots for General Election Where Death of Elected Official Occurs Subsequent to Certification and Deceased Was Not Standing for Re-election.

Opinion Requested by Hon. Roger D. Branigin, Governor.

The unfortunate death of Donald R. Mote, Judge of the Indiana Supreme Court, has created a vacancy in that office. Judge Mote died on September 17, 1968. His funeral was held on September 20. On September 20, the Indiana Republican State Central Committee filed a certificate in your office stating that it had nominated a person to appear on the ballot in the election to be held November 5, 1968. Judge Mote was elected in 1966. His office would not have been subject to election again until 1972. You have asked me to give you my opinion as to the length of the term of office of the person you appoint to fill the vacancy. You also asked whether names of candidates for that office should be placed on the ballot for the November, 1968, election.

Apparent confusion has arisen from failure to differentiate between the procedure for filling a vacancy caused after September 1 of an election year by the death of a candidate for election and the procedure for filling a vacancy caused by the death of an incumbent whose office was not previously subject to election in that year. The deadline for filing certificates of nomination for state office is, by statute, September 1 of an election year. Ind. Election Code, section 110, Burns IND. STAT. ANN. § 29-3805. (In 1968 the fact that September 1 and 2 were both legal holidays extended the date to September 3, as I previously advised you.)
O.A.G., p. 216. In 1948, the then Attorney General, Cleon H. Foust, advised Mr. Edwin M. S. Steers, and the State Election Board, as follows:

"Under the above sections of the statutes all the steps for placing names of candidates on ballots are required to be taken by September 1st before the election and no resignations are permitted after this date. This is apparently for the purpose of definitely determining the content of the ballots by that date so that they may be printed, absent voters' ballots sent out, and the mechanical steps and machinery necessary to conduct the election be had by the date of the general election. The only provisions made for filling a vacancy after that time, as illustrated by the last section quoted, are limited to a situation where a vacancy on the ticket occurs by reason of the death of any candidate whose name has been legally certified." 1948 O.A.G. 388, 391-392. (Emphasis added.)

Attorney General Foust quoted the section of the election code providing for "pasters," and stated:

"The above section providing for pasters applies only where there was the name of a candidate on a ballot as printed and that candidate dies, is removed, or legally resigns. It does not apply to a situation where a vacancy in an office occurs after September 1st and where there are no candidates for that office on the ballot as printed."

Mr. Steers, Sr. and the State Election Board were advised to the same effect in 1952 O.A.G., p. 257. Both opinions were occasioned by the death of a judge after September 1 and before the general election. In 1966, concerning the office of coroner, I stated that the general election at which an office must be placed on the ballot is "the next succeeding election at which the proper statutory procedures for election can be followed." 1966 O.A.G., pp. 373, 375.

On September 9 of this year, the printing of ballots was begun. Absent voter ballots were completed before Judge
Mote died. Absent voter ballots were distributed to county clerks throughout the week of the 16th of September. The printing of other ballots is almost completed, and was at least one-half completed on the date of Judge Mote's death.

In order to place Judge Mote's office on the ballot, these ballots would have to be thrown away and new ones printed, since there is no space on the ballots for pasters naming candidates for that office. The cost of reprinting the ballots would be seventy-five thousand dollars ($75,000.00) to one hundred thousand dollars ($100,000.00). The State Election Board would have to authorize the expenditure of this money in order to place the names of candidates for this judgeship on the ballot.

I must call to your attention, however, the fact that there is presently pending before the Appellate Court of Indiana an action asking that the State Election Board be ordered to place Socialist Labor Party candidates on the ballot. Should the Appellate Court order the State Election Board to place the nominees of that party on the ballot, all ballots would have to be reprinted. If that occurs, and the Democratic Party also nominates a candidate for Judge Mote's office, I believe that the State Election Board could place the office on the reprinted ballots for election in November, 1968. At any rate, such a procedure would bring no objection from this office.

As to whether the ballots are to be recalled purely on the suggestion that one of the major political parties wishes to put forward a candidate, that is a policy judgment for the State Election Board. Let me point out there is a good and proper public policy that at some point in time the ballot must be finalized, as it would otherwise be impossible to hold an election if it were not, not to mention the considerable tax money required to be spent to accomplish this request.

If the State Election Board decides to recall and reprint the ballots because of a decision in the Socialist Labor Party case, the term of the Judge you appoint to fill the vacancy would expire on the first Monday in January, 1969, 2 R. S. 1852, ch. 1, § 8, Burns § 4-112.
1968 O. A. G.

If the State Election Board decides to maintain the ballot as it was certified on September 4, 1968, then the term of the judge you appoint would expire on the first Monday in January, 1971. Even though the term of a Judge of the Indiana Supreme Court is six years under the Indiana Constitution, a vacancy must be filled by election at the first time it is possible to place the office on the ballot in conformance with the statutory procedure provided by the Legislature.

OFFICIAL OPINION NO. 36

September 27, 1968

OFFICERS, COUNTY—SALARY OR COMPENSATION—
County Coroner—Salary of Licensed Veterinarian
Under Coroners’ Salary Act.

Opinion Requested by Hon. James M. Plaskett, State Senator.

You have requested that I determine whether a person legally licensed to practice veterinary medicine and surgery in Indiana pursuant to Acts 1959, ch. 387, which may be found in Burns IND. STAT. ANN. §§ 16-1431 to 16-1456, is "a physician duly licensed to practice as such in this state" within the meaning of the Coroners’ Salary Act, Acts 1957, ch. 319, § 11, Burns § 49-1063. If a licensed veterinarian is a physician duly licensed to practice as such in this state within the meaning of the Coroners’ Salary Act, he is entitled when serving as coroner to one and one-half the base salary set out in that statute for the office.

As you know, I issued an Official Opinion interpreting that section of the Coroners’ Salary Act in 1965, 1965 O.A.G., p. 151. In that opinion, I made the following statement: