Mr. Edwin Steers, Sr.
Member, State Election Board
108 E. Washington Street
Indianapolis 4, Indiana

Dear Mr. Steers:

This is in response to your letter of February 11, 1964, wherein you request an Official Opinion relative to the term of office of an appointee county assessor.

In the letter, dated February 7, 1964, to you from Mr. E. William Shaw, Clerk, Montgomery Circuit Court, the following facts are shown: The duly elected Montgomery County Assessor who took office, for a new term, on January 1, 1963, died in March, 1963, and a successor was duly appointed.

The specific question presented is whether the present appointee may continue to serve the balance of the unexpired term of his predecessor or whether the office of county assessor in Montgomery County should be placed on the primary and general election ballots in 1964.

The Indiana Constitution, Art. 6, Sec. 2, lists the county offices designated therein. These include the offices of clerk of the circuit court, auditor, recorder, treasurer, sheriff, coroner, and surveyor. It will be noted that the office of county assessor is not included therein. In a consideration of your question it is thus of prime importance to bear in mind that the office of county assessor is an office created by the Legislature as distinguished from one created by the Constitution.

1 R. S. 1852, Ch. 115, Sec. 7, as found in Burns' (1951 Repl.), Section 49-409, provides as follows:

"Every person elected to fill any office in which a vacancy has occurred shall hold such office for the unexpired term thereof."

In 1956 O. A. G., pages 31, 32, No. 7, in a consideration of the scope of Burns' 49-409, supra, the following statement is made:
"The Acts of 1 R. S., 1852, Ch. 115, Sec. 7, supra, was construed in the cases of Lake County Election Board et al. v. State ex rel. Eyears (1946), 224 Ind. 465, 68 N. E. (2d) 787, and Carson v. State ex rel. Bath (1896), 145 Ind. 348, 44 N. E. 360, not to apply to the election of people to fill constitutional offices but only to apply to the election of those people filling vacancies in offices which were created by the Legislature. The exact problem in question was very aptly and thoroughly discussed in 1946 O. A. G., page 115, No. 35." (Our emphasis)

Attention is invited to the fact that while Burns' 49-409, supra, contains the word "elected" this has been interpreted to also mean "appointments" in the filling of such offices. In 1948 O. A. G., pages 135, 137, No. 28, in answering an identical question, where a vacancy had been filled in the office of county assessor, after quoting Burns' 49-409, supra, it is stated:

"This section applies to all appointments made to fill vacancies in offices created by the Legislature when no different provision is made therefor. Carson v. State ex rel. Bath, (1896), 145 Ind. 348, 350." (Our emphasis)

The Acts of 1919, Ch. 59, Sec. 160, as amended and found in Burns' (1951 Repl.), Section 64-1101, was superseded in 1961 by the Acts of 1961, Ch. 319, Sec. 1701, as found in Burns' (1961 Repl.), Section 64-1401, supra. This new section reads as follows:

"There shall be elected at the general election on the first Tuesday after the first Monday in November, 1962, and every four [4] years thereafter, in each county in the state, one [1] county assessor who shall be a freeholder in the county for which elected. Such county assessor shall hold the office for the term of four [4] years from the first day of January following and until a successor is elected and qualified, and shall receive such compensation as provided by law." (Our emphasis)
An examination of Burns' 64-1401, supra, shows the statute specifically points out that county assessors shall only be elected in certain years, namely, in November 1962, and every four years thereafter. It is also emphasized that there is no mention of the successor being elected at the "next General Election," as is the case provided in some statutes. In 1948 O. A. G., No. 28, supra, on page 140, it is stated:

"This would indicate that a distinction must be made between those offices where there is a specific provision as to when elections shall be held therefor and those offices where there is no such provision."

The 1948 O. A. G., No. 28, supra, on page 140, then states:

"The cumulative effect of the application of these rules of statutory construction results in the conclusion that one appointed to a vacancy in the office of county assessor serves for the unexpired term of his predecessor."

Therefore, it is my opinion, that inasmuch as the office of county assessor is an office created by the Legislature, as distinguished from a constitutional office, and since the office of county assessor is one for which the elections are scheduled on a specific four year basis, no election for said office would be proper in 1964 and the present incumbent is entitled to serve the full unexpired term of his predecessor.

OFFICIAL OPINION NO. 12

February 21, 1964

Hon. Ralph H. Waltz  
State Representative  
Hagerstown, Indiana

Dear Representative Waltz:

In your letter you request an Official Opinion in connection with the work of the School Transportation Study Commission, of which you are chairman. Your question concerns the transportation of parochial school children under the pro-