approval of its Comprehensive Plan by the State Commission for the Reorganization of School Corporations.

It is apparent that the concluding language of the first amendment was mistakenly omitted when the second amendment was added, thereby making the proposed first amendment unintelligible and inapplicable. This mistake in draftsmanship had the effect of defeating the grant of authority to the judge to call the election on his own initiative, but does not impair that part of the amendment stating that "in lieu thereof" (meaning, regardless of the foregoing provisions), the County Committee for the Reorganization of School Corporations, by written request signed by a majority of said committee, could, at any time following the approval of its plan by the state commission, request the court to call such special election on such Comprehensive Plan.

I am, therefore, of the opinion the County Committee may, by a written request signed by a majority thereof, request the circuit court judge to call a special election on a Comprehensive Plan approved by the State Commission for the Reorganization of School Corporations, without waiting such ninety-day period, and that such request may be made at any time following approval of the plan by the State Commission for the Reorganization of School Corporations.

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OFFICIAL OPINION NO. 20

March 15, 1962

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

Dear Mr. Steers:

This is an answer to your letter of February 27, 1962, wherein you request an Official Opinion based upon a question submitted to you, as a member of the State Election Board, by a letter dated February 19, 1962, from Barrett Brock, Clerk, Franklin Circuit Court, Brookville, Indiana.

The factual data on the circumstances giving rise to your question have been stated in Mr. Brock's letter as follows:
"The Franklin County Board of Elections, having met, with this problem arising in regard to the coming election. The question is this, Mr. Lawrence Reuter was elected County Commissioner in District No. 3 in Franklin County November 1960. Mr. Reuter was killed in an accident shortly after being elected, before qualifying for said office. The Commissioner holding office at time of said death has continued to hold office from January 1, 1962."

Your specific question relative to the above facts is stated as follows:

"The question is will the Commissioner in the coming election run for the unexpired two year term created by said death of Commissioner or will he run for one three year term?"

Your question, on a factual basis, is identical, except for names and dates, to one found in 1936 Official Opinions of the Attorney General, page 9. In view of the fact that in the instant case the successor died after his election but before qualifying, no vacancy existed and the incumbent commissioner for District No. 3 is permitted to hold over until his successor is duly elected and qualified.

State ex rel. Denton v. Kinkle (1949), 227 Ind. 564, 86 N. E. (2d) 677;


In considering your question it should be remembered that the office of county commissioner is purely statutory as distinguished from constitutional offices. The office of county commissioner has been created by the Legislature under authority of the Indiana Constitution, Art. 6, Sec. 3, which provides:

"Such other county and township officers as may be necessary, shall be elected, or appointed, in such manner as may be prescribed by law."

In 1936 O. A. G., page 9, supra, at pages 15 and 16 it is said:
1962 O. A. G.

"There is no statutory provision expressly covering the matter of the time of election of a successor to an incumbent commissioner who holds over because of the death of his elected successor before qualifying, except the general election law hereinabove referred to, which provides that at the time of each biennial election 'all offices the terms of which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law.' (Section 29-701, supra.) In my opinion the Legislature intended such provision to apply to all offices where the incumbent's fixed term had expired prior to such biennial election, as well as to those which would expire between such election and next election ensuing thereafter. Consequently, it is my opinion that a successor to the incumbent county commissioner should be elected at the next general election in November, 1936.

"If a successor to the hold-over member on the board of commissioners be elected, as indicated, at the next general election, then such successor would be entitled to the office immediately upon his election and qualification, under the provisions of Article 15, Clause 3 of the Constitution, supra. He would only hold office, however, until the expiration of the three-year term of office for which the decedent was originally elected. This is by reason of Section 26-604, Burns' Annotated Statutes, Revision of 1933, which provides in part as follows:

"'The terms of office of County commissioners shall be three years, * * * and the term of office of no two districts in the same county shall begin in the same year; and the year in which the term of office of each district shall begin shall be determined by calculating periods of three years from the end of the term for which the commissioner for the same district was elected upon the organization of the board of commissioners for the county; * * *.' (Sec. 1, Chap. 38, Acts 1885.)

It is the intention of the statute that the board of commissioners shall be so organized that one member
shall retire each year, and the term of one commissioner-elect shall commence each year, so that there may at all times be at least two commissioners on the board of some experience. In order to preserve this regularity of succession, the terms of office of the commissioner from each district must commence and end regularly at periods of three years.

Parmater v. State *ex rel.* Drake, 102 Ind. 90;
Parcel v. State *ex rel.* Lowrey, 110 Ind. 122;
Bell v. State *ex rel.* Summers, 129 Ind. 1.”

It will be noted, without any change on the reasoning above, that the provisions heretofore contained in Section 29-701, have been repealed but even stronger additional wording has been incorporated in the Acts of 1945, Ch. 208, Sec. 187, of the Indiana Election Code, as found in Burns’ (1949 Repl.), Section 29-4801, which reads as follows:

“A general election shall be held on the first Tuesday after the first Monday in November in even-numbered years, at which election, all existing vacancies in office, and all offices the terms of which shall have expired or which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law.” (Our emphasis)

The case of State *ex rel.* Denton v. Kinkle, *supra*, involves the term of office of a county commissioner for which a successor had been elected for a three year term but died prior to qualifying and taking the oath of office thus constituting a factual background identical, except for names and dates, with the instant case. The Supreme Court on page 569 after setting out the provisions of Burns’ 29-701 and 29-4801, *supra*, made the following statement:

“It will be noted that by the 1945 Act, above set out, there was added to the section adopted in 1881, the italicized words ‘which shall have expired or which.’ We must conclude that by the adding of these words to the 1945 statute the legislature intended to add something to the then existing statute, and that the only
thing that could have been intended was that at such
general election not only the offices whose term should
expire before the next general election should be filled,
but, also, all offices the term of which had expired prior
to such biennial election then being held, and, also, that
the ‘terms’ referred to were intended to be definite
terms of office fixed by the Constitution or statute.

“In regard to this section we approve of what has
been said heretofore by our attorney general, as fol-
lows:

“‘It seems obvious that the “terms” referred
to in the foregoing provision were intended to
be the definite terms of office fixed by the Con-
stitution or by statute for the various offices,
rather than the indefinite or defeasible terms
represented by the fixed terms plus a possible
“holding over” under the provisions of Article
15, Clause 3 of the Constitution, supra.’ Opinions
of the Attorney General of Indiana, 1936, pp.
9, 11.

“It will be noted that on page sixteen of this same
opinion will also be found the following language:

“‘In my opinion the Legislature intended such
provision to apply to all offices where the incum-
bent’s fixed term had expired prior to such bien-
nial election, as well as to those which would
expire between such election ensuing thereafter.’

At the time this opinion was rendered, said § 29-701,
Burns’ 1933, was in force. If there was any doubt as to
the validity of this last quoted portion of the opinion
at the time the same was rendered, it would seem to us
that it has been eliminated by said § 29-4801, Burns’
1933 (1947 Supp.) which, as we have seen, specifically
provides that the election shall be had for all offices, the
terms of which shall have expired at the time of such
election. It is altogether probable that this insertion
was made in the 1945 Act to clear up any such doubt.

“It is our opinion, therefore, that the appellee was
properly elected on November 2, 1948, for the unex-
pired portion of the term.” (Our emphasis)
Therefore, based on the authorities above cited, it is my opinion that there will be a county commissioner to be elected from District No. 3 of Franklin County, Indiana, in the coming General Election of 1962. The candidacy should be for the unexpired portion of the present term and the candidate elected and qualified will be entitled to serve the unexpired portion of the present term for District No. 3.

OFFICIAL OPINION NO. 21
March 16, 1962

Mr. Gene E. Laird
Secretary-Treasurer
State Board of Embalmers and Funeral Directors
Box 288
Amboy, Indiana

Dear Mr. Laird:

Your letter has been received requesting an Official Opinion on the following:

“I have been requested by the Indiana State Board of Embalmers and Funeral Directors to ask for your opinion on the following questions which have arisen under the Statute governing Embalmers and Funeral Directors.

“Moore and Kirk Funeral Homes, Inc. is a corporation using all of its assets in the funeral directing business under the direction and supervision of licensed funeral directors. At the present time the corporation is operating from five locations in Marion County, Indiana.

“George F. Usher is a licensed funeral director.

“The corporation and Mr. Usher propose to form a partnership, to share the facilities of the corporation, and to operate a funeral directing business at three of the locations presently operated by the corporation. The partnership will use the name ‘Moore and Kirk and George F. Usher Mortuaries.’ The corporation will