Although this situation does not constitute the circumstance of two vacancies existing simultaneously, nevertheless, it does amount to two successive vacancies in the same office. Thus, there was the vacancy in the office the term of which expires on December 31, 1961, and a "prospective vacancy" for the same office in the following term which commences on January 1, 1962. Therefore, because there is a separate and independent vacancy in the office for each of two successive terms, it is my opinion that these vacancies must each be filled by specific election or appointment to such vacancy and that the appointee must specifically qualify for the office each time he receives such appointment. Therefore, if it be the desire of the commissioners that Mr. Farmer also serve the term commencing January 1, 1962, he must be specifically elected or appointed for that term and duly qualify for the same. The procedure required is the same as that which would apply if one person were elected to fill the vacancy for the term which expires December 31, 1961, and a different person were elected to fill the vacancy for the term commencing January 1, 1962.

OFFICIAL OPINION NO. 66

December 1, 1961

Mr. Albert Kelly, Administrator
State Department of Public Welfare
100 North Senate Avenue, Room 701
Indianapolis 4, Indiana

Dear Mr. Kelly:

This is in response to your recent letter requesting my Official Opinion upon the following question:

> "May a county department of public welfare lawfully supplement an aid to dependent children's award with wardship funds if an order of court is first obtained authorizing such expenditure?"

Since your question does not concern the conditions prerequisite to the acceptance of federal funds in conjunction with

aid to dependent children, this Opinion does not touch upon that subject, but is limited to the specific question as stated.

Acts of 1936 (Spec. Sess.), Ch. 3, Sec. 72, as amended, as found in Burns' (1951 Repl.), Section 52-1241, concerns the amount of aid which may be given to any dependent child. Due to the length of said section, I am not quoting it, but am setting out the subject matter therein contained which is pertinent to your question. The section states that the amount of assistance which may be granted for any dependent child shall be determined by the local county department of public welfare with due regard for existing conditions in accordance with the Rules and Regulations made by the State Department of Public Welfare. The section then sets a maximum of $50.00 per month for expenses other than medical which may be paid on behalf of the first dependent child of a particular family, and then sets amounts payable on behalf of additional children in any calendar month. The section further provides that these additional sums may be changed by Rule and Regulation of the State Department, but that they may not exceed the maximum established by the Federal Social Security Act. Rule 2-409 of the State Department of Public Welfare, effective July 1, 1952, provides for the monthly payment for additional children of $23.00.

Aid to dependent children under the foregoing section has, since its enactment in 1936, been administered in conjunction with the federal government as provided in the Social Security Act. In 1961, Congress amended said Act by adding a new Section 408 thereto concerning the definitions of the terms "dependent child" and "aid to dependent children." Said additional section was a part of Public Law 87-31, and reads in part as follows:

> "Effective for the period beginning May 1, 1961, and ending with the close of June 30, 1962—
>
> > "(a) the term 'dependent child' shall, notwithstanding section 406(a), also include a child (1) who would meet the requirements of such section 406(a) or of section 407 except for his removal after April 30, 1961, from the home of a relative (specified in such section 406(a) as a result of a judicial determination to the effect

> that continuation therein would be contrary to the welfare of such child, (2) for whose placement and care the State or local agency administering the State plan approved under section 402 is responsible, (3) who has been placed in a foster family home as a result of such determination, and (4) who received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated;
>
> "(b) the term 'aid to dependent children' shall, notwithstanding section 406(b), include also foster care in behalf of a child described in paragraph (a) of this section in the foster family home of any individual; * * *."

Another portion of the aforesaid amendatory law was discussed in 1961 O. A. G., No. 41, written to Representative James S. Hunter under date of August 23, 1961.

Jurisdiction of the Juvenile Courts in Indiana is set out in Acts of 1945, Ch. 356, as found in Burns' (1956 Repl., 1961 Supp.), Section 9-3201 *et seq.*, and Section 19 of that Act, as amended most recently by Acts of 1961, Ch. 227, Sec. 1, is found in Burns' (1961 Supp.), Section 9-3219. That section concerns wards of a Juvenile Court and reads in part as follows:

> "When found by the court to be advisable, compensation shall be allowed for the care of any child made a ward by order of the court or for any child coming within the provisions of this act and placed by order of the court with any custodial agency or institution, or family home, or for any child on furlough or release from a state institution, even though wardship may be retained by the trustees of said institution, and where the expense for the care and maintenance of such child is not otherwise provided by law, shall not exceed the sum of two dollars per day for any child, except that by order of the court in any individual case, an increased amount may be paid for those children having unusual needs and requiring special care, or an addi-

> tional allowance may be made for unusual expense in connection with the care of such child when such expenses are not included in the ordinary care, and support of such child, or to meet the immediate needs of a child when first made a public charge that cannot be paid from the per diem allowance at the time: * * *."

Thus, we are now presented with two alternative methods of providing care for certain juvenile wards. First, a child may be removed from a home by order of court, and placed in a foster home at a usual cost of $2.00 per day, or approximately $60.00 per month, which amounts are payable in full out of a county budget alone.

Under the new alternative method, care of a child who received aid during the month in which wardship proceedings were initiated could come within the aid to dependent children section of The Public Welfare Act, and the cost thereof divided between federal, state and county sources. However, if the latter method were used, the maximum sums available would be $50.00 for the first child and $23.00 for any additional child or children of any given family. Adoption of the alternative plan would result in a cut in fees payable to the foster parents and would in all probability decrease the number of homes available for the care of children made wards of the court. You therefore ask whether an aid to dependent children award under The Welfare Act could be supplemented with an allowance under Burns' 9-3219, *supra,* thus equalizing the amount now available under the latter section alone.

The answer to your question appears to be controlled by statute. Burns' 9-3219, *supra,* begins by saying:

> "When found by the court to be advisable, compensation shall be allowed for the care of any child made a ward by order of the court * * *."

Thus any supplementation to a dependent child's award is discretionary with the court, up to the sum allowable by the aforesaid section, unless otherwise provided by law.

It is, therefore, my opinion that aid given for a dependent child by a county department of public welfare in accordance with Section 408 of the Social Security Act may be supple-

mented with funds available under Burns' 9-3219, as amended, if an order is first obtained from a court of proper jurisdiction. It is my further opinion that the total supplemented award may not exceed $2.00 per day unless the court shall by special order allow an increased amount for a child having unusual needs and requiring special care, or shall make an additional allowance for unusual expense in connection with the care of any such child.

OFFICIAL OPINION NO. 67

December 5, 1961

Honorable Alice C. Whitecotton
Clerk, Supreme and Appellate Courts
217 State House
Indianapolis, Indiana

Dear Mrs. Whitecotton:

The letter received by my office wherein you request an Official Opinion relative to your salary reads as follows:

> "I would appreciate your official opinion in answer to a question which has been raised in connection with Chapter 128, Section 1 of the Acts, 1961.
>
> "Chapter 128, Section 1 provides that the Clerk of the Supreme and Appellate Courts salary shall be $9,000.00. It also provides that increases shall be effective immediately following the term for which they were elected in the general election held November 8th, 1960.
>
> "I was elected Clerk of the Supreme and Appellate Courts of the State of Indiana in November, 1958 and am at present the holder of said office.
>
> "I would appreciate an official interpretation of the following:
>
> "1. What is the present salary of the Clerk of the Supreme and Appellate Courts of the State of Indiana?