“* * * a completed gift for a public charity duly accepted constituted a contract between the donor and the donee even though the latter was a town, the sanctity of which was under the protection of Art. I, § 10, of the Constitution of the United States, as interpreted by the Supreme Court of the nation * * *."

Adams et al. v. Plunkett et al. (1931), 274 Mass. 453, 175 N. E. 60.

By the terms of Acts of 1915, Ch. 142, supra, the county commissioners of any county were required to receive a deposit or legacy of money to be held in trust, in perpetuity, or as long as designated by the donor or testator, and therefore, in answer to your question, it is my opinion that the county must continue to comply with the requirements of the act with regard to interest that existed at the time of the creation of the trust fund.

OFFICIAL OPINION NO. 4

January 18, 1960

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

Dear Mr. Steers:

In reply to your recent letter concerning the term to be served by an appointee to the office of Clerk of the Circuit Court, I respectfully submit the following observations. The specific term which you have mentioned is that of the Hon. Edwin McClure, Clerk of the Circuit Court of Marion County, appointed by the Governor of Indiana to fill the vacancy in that office caused by the death of the Hon. Harry Gasper on April 7, 1959. The specific questions asked by the appointee, Mr. McClure, which you have referred to this office for consideration, are as follows:

“* * * whether I shall serve for Mr. Gasper’s unexpired term which term expires December 31st, 1962
or whether I must stand for election in the General Election to be held in November, 1960.

"If I am a candidate and nominated and elected in the general election of 1960 (if it be necessary to run in that General Election) will my term of office which would then start January 1st, 1961, be for a period of two years or a period of four years?"

The statutes in point are as follows:

Acts of 1929, Ch. 18, Sec. 1, as found in Burns' (1951 Repl.), Section 49-2702:

"Whenever there has been or shall be a vacancy in the office of clerk of the circuit court of any county in this state, and when such vacancy shall have been or shall be filled by appointment, the person who is appointed to fill such vacancy shall hold office until the end of the term for which the predecessor of such appointee, whose unexpired term said appointee is serving, shall have been elected, and such appointee shall, without election, serve the full unexpired term of such predecessor."

1 R. S. 1852, Ch. 115, Sec. 2, as found in Burns' (1951 Repl.), Section 49-404:

"Whenever any vacancy occurs in any circuit or district office commissioned by the governor, he may fill such vacancy until filled by a qualified successor."

It is to be particularly noted that the latter statute also contains an entirely different provision concerning the term of appointments to fill vacancies in county and township offices:

1 R. S. 1852, Ch. 115, supra, Sec. 4, as found in Burns' (1951 Repl.), Section 49-405:

"The board of county commissioners shall fill all (other) vacancies in county or township offices, except such township or other 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, as the case may be, proper to elect such officers.”

The language of the first statute above quoted, Acts of 1929, Ch. 18, Sec. 1, as found in Burns’ (1951 Repl.), Section 49-2702, supra, is set out verbatim as a part of the Opinion of the Attorney General to the Governor of Indiana, 1951 O. A. G., page 312, No. 104, which Opinion is quoted with approval in the case of State ex rel. McClure, Clerk v. Marion Superior Court, Room No. 1 et al. (1959), in the Supreme Court of Indiana, 158 N. E. (2d) 264. Although that part of the Opinion referring to the term to be served by an appointee has been omitted in the quotations set forth in the Opinion of the Supreme Court, it is very important to note that the Supreme Court held that the authority of the Governor to make the appointment to fill the vacancy in the office of the Clerk of the Circuit Court is statutory—1 R. S. 1852, Ch. 115, Sec. 2, as found in Burns’ (1951 Repl.), Section 49-404, supra, set out hereinabove. The Supreme Court of Indiana does not hold the Clerk of the Circuit Court to be a state officer within the meaning of the provisions in the Indiana Constitution, Art. 5, Sec. 18, which provides for the appointment by the Governor, in case of vacancy.

The only specific authority with which I am familiar which holds that the appointee in the office of Clerk of the Circuit Court shall not serve the unexpired term, is 1952 O. A. G., page 230, No. 58. The basis of this Opinion is the conclusion of Attorney General McManamon that the Acts of 1929, Ch. 18, Sec. 1, as found in Burns’ (1951 Repl.), Section 49-2702, supra, in respect to appointments to fill vacancies is subject to the same constitutional infirmity as 1 R. S. 1852, Ch. 115, Sec. 7, which provided that every person elected to fill any office in which a vacancy has occurred shall hold such office for the unexpired term thereof. This earlier statute had been held to be unconstitutional because it purported to change the extent of the term of persons elected to constitutional offices, contrary to the provisions of the Indiana Constitution, Art. 6, Sec. 2, which provides a term of four (4) years for certain elected officers, including the Clerk of the Circuit Court.

State ex rel. Hench v. Chapin (1886), 110 Ind. 272, 11 N. E. 317, and cases there cited.
This 1952 Opinion of the Attorney General neither disapproves nor recognizes the existence of the 1951 Opinion written by the same Attorney General with the contrary conclusion of law, and the 1952 Opinion also erroneously cites two Supreme Court Opinions as authority for the proposition that the 1852 statute had been held unconstitutional as applied to appointees to fill vacancies in constitutionally created offices.

Offices are not grants or contracts, but trusts or agencies, and they are completely within the power of the Legislature except to the extent that the Indiana Constitution forbids interference with them.

Coffin v. The State ex rel. Norton (1855), 7 Ind. 157.

As above stated, the Supreme Court of Indiana has specifically recognized the power of the General Assembly to provide for and grant the authority to make the appointment to fill the vacancy in the office of the clerk of the circuit court. The General Assembly has also provided that the appointment shall be for the full unexpired term of the predecessor, and I find no prohibition in the Indiana Constitution which forbids such a provision by statute as to such office.

In conclusion, therefore, it is my opinion that any person appointed to fill a vacancy in the office of clerk of the circuit court shall hold that office until the end of the term for which his predecessor was elected. In this case it is therefore my opinion that no election may lawfully be held in 1960 for the office of Clerk of the Circuit Court of Marion County. Although this answer makes unnecessary any answer to your second specific question, it may be noted that the law is clear in Indiana that as to any office for which the term is provided in the Indiana Constitution, the person elected to fill the same shall serve the full constitutional term without abridgement. Therefore, if it be judicially determined that an election should be held in 1960 for the office of Clerk of the Circuit Court of Marion County, the elected clerk will hold office for the constitutional term of four (4) years.