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1. CORONER — COUNTY LESS THAN ONE HUNDRED THOUSAND POPULATION — OFFICE NOT VACATED THROUGH ABSENCE, MILITARY FORCES, UNITED STATES.
2. INQUESTS IN SUCH COUNTY — JUSTICE OF PEACE HAS POWER AND DUTY TO HOLD INQUESTS IN PRESENCE SHERIFF OR DEPUTY SHERIFF DURING SUCH TEMPORARY ABSENCE.

SYLLABUS:

1. *A coroner in a county of less than one hundred thousand population does not vacate his office because of absence with the military forces of the United States.*

2. *In such a county a justice of the peace shall have the powers and the duties of the coroner to hold inquests in the presence of the sheriff or a deputy sheriff in the place of the coroner while that person is temporarily absent in the military service of the United States.*

Columbus, Ohio, September 30, 1941.

Hon. Richard E. Hole, Prosecuting Attorney,
Greenville, Ohio.

Dear Sir:

I have your letter of recent date which states the following facts. In Darke County, which has a population of less than one hundred thousand, the person elected as coroner at the November, 1940 election has been called to duty with the military forces of the United States under the Selective Service Act. In your letter you refer to the seeming inconsistencies between Section 2856-3, General Code, and Section 2829, General Code, as to the filling of the office of coroner when vacant and inquire if vacant how such office shall be filled.

It is essential to note at the start of this discussion that in an opinion

released November 2, 1940, found in Opinions of the Attorney General for 1940, Vol. II, page 982, I determined that the office of county auditor did not become vacant by reason of the incumbent's absence with the armed forces of the United States. That result I consider to be the general rule applying to temporary absence from office under such circumstances in the absence of specific statutory provisions dictating a contrary result.

The Ninety-Fourth General Assembly enacted House Bill No. 224, effective July 21, 1941, now codified as Sections 2397-1 and 2397-2, General Code, which provides that a vacancy exists in any county office when the incumbent is absent from the county for ninety consecutive days. That enactment, however, contains the following proviso:

"Nothing contained in this act shall apply to a county officer while in the active military service of the United States."

I consider the above quoted language to be the equivalent of a legislative statement that absence with the military forces does not vacate a county office.

Going now to the particular provisions of law concerning the office of county coroner, I find that Section 2829, General Code, provides as follows:

"In counties having a population of more than 100,000, according to the latest federal census, when the office of coroner becomes vacant by death, resignation, expiration of the term of office or otherwise, or when the coroner is absent from the county, or unable from sickness or other causes to discharge the duties of his office, the county commissioners shall appoint a suitable person to fill the vacancy, who shall give bond and take the oath of office as prescribed for the coroner. When such person is temporarily acting in the capacity of coroner he shall receive the compensation equivalent to that allowed by law to coroners in such cases.

In counties having a population according to the latest federal census of less than 100,000, when the office of coroner becomes vacant by death, resignation, expiration of the term of office or otherwise, the county commissioners shall appoint a suitable person to fill the vacancy, who shall give bond and take the oath of office as prescribed for the coroner; when the coroner is absent from the county, or unable from sickness or other cause to discharge the duties of his office, a justice of the peace

of the county shall have the powers and duties of the coroner to hold inquests in the presence of the county sheriff or deputy sheriff. When acting in the capacity of coroner, a justice may receive the fees allowed by law to coroners in such cases."

Since the county with which we are here concerned has a population of less than one hundred thousand, the second paragraph of the above section is controlling. Under the words of that paragraph and under the ruling of the opinion above referred to, and having in mind the provisions of Section 2397-2, supra, regarding military absence, it would appear that no vacancy exists in the office concerned. You will have noted that it is only when a vacancy exists that the county commissioners are empowered to appoint a person to fill the office of coroner or to perform the duties of that office. There being then no vacancy it follows that a justice of the peace of the county shall act in the place of the coroner since the coroner, who still holds his office, is "absent from the county" and that such justice of the peace shall discharge the duties of the coroner in performing inquests in the presence of the sheriff or his deputy.

The only question now remaining is whether or not Section 2856-3, General Code, would now prevent a justice of the peace from so acting in the place of the coroner during the coroner's absence from the county. That section, in so far as it pertains to the question at hand, is as follows:

"No person shall be eligible to the office of coroner in any county except a licensed physician of good standing in his profession or a person who shall have previously served as coroner prior to his election. * * * "

In my opinion the above words are no bar to a justice of the peace acting in the absence of the coroner from the county for the reason that the justice of the peace does not, while so acting, hold the office of coroner, but rather merely acts in the place of or assumes the duties of the coroner who, while absent, still holds the office.

In accordance with the above you are advised that it is my opinion that a coroner in a county of less than one hundred thousand population does not vacate his office because of absence with the military forces of the United States and that in such a county a justice of the peace shall have the powers and the duties of the coroner to hold inquests in the presence of the sheriff or a deputy sheriff in the place of the coroner while

that person is temporarily absent in the military service of the United States.

Respectfully,

THOMAS J. HERBERT,
Attorney General.