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1. RECORDER, COUNTY—APPOINTED OCTOBER 1, 1951 TO FILL VACANCY—MAY LAWFULLY RECEIVE SALARY PROVIDED FOR SUCH OFFICE, SECTION 2995 G. C., AMENDED, EFFECTIVE SEPTEMBER 8, 1951.
2. COUNTY RECORDER—RESIGNATION—OCTOBER 1, 1951—SUCCESSOR MUST BE ELECTED AT GENERAL ELECTION, NOVEMBER, 1952.
3. INDIVIDUAL SO ELECTED—SHOULD BEGIN TO SERVE TERM ON DATE OFFICIAL RESULTS OF ELECTION ASCERTAINED—TERM ENDS FIRST MONDAY IN JANUARY, 1953.
4. SICK LEAVE—COUNTY EMPLOYEE MAY LAWFULLY RECEIVE SAME—ABSENCE DUE TO INJURY—ACTION OF INDUSTRIAL COMMISSION ON CLAIM—BASED ON INJURY—INDUSTRIAL COMMISSION MAY PROPERLY TAKE SUCH SICK LEAVE PAYMENTS INTO ACCOUNT TO DETERMINE AMOUNT OF COMPENSATION FOR DISABILITY OVER PERIOD COVERED BY SICK LEAVE PAY—SECTION 486-17c G. C.

SYLLABUS:

1. A county recorder appointed on October 1, 1951, to fill a vacancy in that office, may lawfully receive the salary provided for such office under the provisions of Section 2995, General Code, as amended effective September 8, 1951.

2. Where a county recorder has resigned, effective October 1, 1951, the successor of a person appointed to fill such vacancy must be elected at the general election in November, 1952.

3. In such case the individual so elected would serve for a term beginning on such date as the official results of such election can be ascertained and the successful candidate can qualify in the office, and ending on the first Monday in January, 1953.

4. A county employe may lawfully receive sick leave pay under the provisions of Section 486-17c, General Code, during a period of absence due to an injury, without reference to the action of the industrial commission on a claim by such employe for compensation based on such injury; but the industrial commission may properly take such sick leave payments into account in determining the amount of compensation for disability during the period covered by such sick leave pay. State ex rel. Rubin v. Industrial Commission, 134 Ohio St., 12.

Columbus, Ohio, October 24, 1951

Hon. Harold K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The county recorder’s term expires the first Monday in January, 1953. He resigned, to take effect October 1, 1951. The county commissioners will appoint someone to fill the vacancy until his successor is elected and qualified. G. C. 2755.

“Taking into consideration Section 2995 effective 9-8-1951 and 148 O. S., 581, in your opinion, will the new appointee be entitled to receive the salary increase provided in Section 2995 from Oct. 1, 1951 to the 1st Monday in January, 1953?

“Also taking into consideration 1945 A. G. Opns. No. 610, when in your opinion will the recorder’s successor be first elected and for what term?

“Also in considering Section 486-17c, in your opinion would a full time employe of the county drawing accident compensation be entitled to draw sick leave pay also?”

Your first question concerns the application of the provisions of Section 2995, General Code, effective September 8, 1951, to the salary of the incumbent who will be appointed to fill the vacancy in the office of the county recorder, beginning October 1, 1951. This section quite obviously provides for a salary in excess of that which was provided by former Sections 2995 and 2995-1, General Code, both of which were repealed by the enactment of House Bill No. 560, 99th General Assembly.

In this situation the specific question which arises is whether the provisions of Article II, Section 20, Ohio Constitution would be applicable so as to forbid the change in the salary of an officer “during his existing term.”

It is to be observed here that although the increase in salary is being effected by a statutory enactment which became effective during the term of the elected incumbent, such enactment became effective prior to the date on which the person appointed to fill the vacancy began his term. In these circumstances, it is quite clear that the rule in *State ex rel.*

Glander v. Ferguson, 148 Ohio St., 581, will be applicable. The syllabus in that decision is as follows:

"1. The words, 'during his existing term,' as used in Section 20 of Article II of the Constitution of Ohio, which inhibits a change of 'salary of any officer during his existing term,' apply strictly to the term to which the officer is appointed or elected and not to the period constituting the statutory term of the office.

"2. The inhibition against change of salary of a public officer in Section 20, Article II of the Constitution of Ohio, does not apply to a person appointed to a partially expired statutory term, where the salary of the office is increased by statute effective during the preceding portion of such term and during the time such person was holding over in the office under his appointment thereto for the preceding statutory term."

Applying the rule in the Glander case to the case at hand, it may readily be concluded that there is no constitutional inhibition against the new appointee receiving the salary provided for by Section 2995, General Code, as amended effective September 8, 1951.

Your second question is concerned with the date on which an election should be held for the purpose of choosing a successor to the person appointed to fill the vacancy occurring in October, 1951. This question appears to be governed by the provisions of Section 1 of Article XVII, Ohio Constitution and by Section 10, General Code. Section 1, Article XVII, Ohio Constitution reads:

"Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years."

Section 10, General Code, provides in parts, as follows:

"When an elective office becomes vacant, and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified. Unless otherwise provided by law, such successor shall be elected for the unexpired term at the first general election *for the office* which is vacant that occurs more than thirty days after the vacancy shall have occurred. * * *

(Emphasis added.)

The effect of these provisions relative to elections to fill vacancies in county offices was under scrutiny in the case of State ex rel. Grace

v. Board of Elections, 149 Ohio St., 173. The syllabus in that case is as follows:

“Where, by reason of the death of an incumbent, a vacancy occurs in the office of county sheriff and is filled by an appointee of the board of county commissioners, such appointee shall hold the office until a successor is elected at the first election held on the first Tuesday after the first Monday in November in an even-numbered year and occurring more than 30 days after the occurrence of such vacancy.”

In the opinion by Hart, J., in the Grace case, after noting the definition of “general election” as “any election held on the first Tuesday after the first Monday in November,” as set out in Section 4785-3, General Code, the writer says:

“Constitutional and statutory provisions should, if possible, be so construed as to give them reasonable and operable effect. Under the present Constitution and statutes, no county ticket for election to county offices is provided for general elections occurring in the odd-numbered years, and clearly a county board of elections could not be required to provide such a ticket in odd-numbered years. The only officers to be elected in the odd-numbered years are those named in paragraph d of Section 4785-4, General Code.”

In complete harmony with the decision in the Grace case, was the conclusion previously reached by one of my predecessors, in Opinion No. 610, Opinions of the Attorney General for 1945, page 781. The syllabus in that opinion is as follows:

“Where a vacancy in the office of county recorder occurs more than thirty days before the next general election *at which county officers can be voted for*, the successor of a person appointed to fill such vacancy must be elected at such general election.”
(Emphasis added.)

In this state of the law, I must conclude that the first election of an individual to fill the vacancy in the office of county recorder in this case, should be at the November election in 1952.

As to the term for which such successor will be elected, your attention is invited to the provisions of Section 2750 and Section 2750-1, General Code. These sections read as follows:

Section 2750: There shall be elected quadrennially in each

county a county recorder, who shall assume office on the first Monday in January next after his election and who shall hold said office for a period of four years."

Section 2750-1: The present existing terms of office of county recorders are hereby extended to the first Monday in January, 1937. The first regular election for the office of county recorder under this act shall be held in November, 1936; but any vacancy in such office occurring more than thirty days prior to the regular election for state and county officers in the year 1934 shall be filled at such election for the remainder of the term prescribed in this section."

It is obvious from the provisions of these sections that the term of the person elected to this office at the November, 1948 election would extend from the first Monday in January, 1949 to the first Monday in January, 1953, at which time his successor, elected at the November, 1952 election, will commence a new statutory term. It appears, therefore, that there will be a period of approximately two months between the election of 1952 and the beginning of a new four year term, which period will constitute a part of the current four year term of office. In these circumstances, it is possible, of course, for two elections to be held for this same office in November, 1952, i.e., one for the short term, beginning as soon after the election as the results can be officially ascertained and the successful candidate can qualify in the office, and ending on the first Monday in January, 1953; and the second for the full four year term beginning on the first Monday in January, 1953.

Your third question concerns the eligibility of a county employe for sick leave under the provisions of Section 486-17c, General Code, where such employe is currently "drawing accident compensation" by which term I assume you refer to an award under the workmen's compensation act. This section, 486-17c, General Code, is as follows:

"Each full-time employe, whose salary or wage is paid in whole or in part by the state of Ohio and each full-time employe in the various offices of the county service and municipal service, and each full-time employe of any board of education, shall be entitled for each completed month of service to sick leave of one and one-fourth ($1\frac{1}{4}$) work days with pay. Employes may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to illness, injury, exposure to contagious disease which could be communicated to other employes, and to illness or death in the employe's immediate family. Unused sick leave shall be cumulative up to ninety (90) work

days unless more than ninety (90) days are approved by the responsible administrative officer of the employing unit. The previously accumulated sick leave of an employe who has been separated from the public service may be placed to his credit upon his re-employment in the public service. An employe who transfers from one public agency to another public agency shall be credited with the unused balance of his accumulated sick leave. Provisional appointees or those who render part-time, seasonal, intermittent, per diem, or hourly service shall be entitled to sick leave for the time actually worked at the same rate as that granted full-time employes herein. The responsible administrative officer of the employing unit may require the employe to furnish a satisfactory affidavit to the effect that his absence was caused by illness due to any of the foregoing causes. This act shall be uniformly administered as to employes in each agency of the state government.

“Nothing in this act shall be construed to interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employes for unused sick leave.”

The provisions of this statute, on the point here under scrutiny, are free of ambiguity and leave little, if any, latitude for interpretation or construction. It is plainly provided here that, subject to the approval of the responsible officer of the administrative unit, the employe has a clear statutory right to sick leave with pay for absence due to illness, injury, etc. Such right is not dependent on any condition or event except as indicated in this section. In these circumstances I am unable to perceive how it could be supposed that this right would depend in any way on the action of the industrial commission in granting or withholding an award based on an injury which also forms the basis of the claim for sick leave.

As a matter of incidental interest, it may be observed that the converse of this proposition is not true in all cases. In *State ex rel. Rubin v. Industrial Commission*, 134 Ohio St., 12, the court pointed out a distinction between an allowance based on impairment of earning capacity and one based on temporary total disability, holding that in the latter instance no award could be made where the employe, during the period for which compensation is sought, had no loss of wages. An employe receiving sick leave pay receives his full pay and has no loss of wages. Under this rule, therefore, the industrial commission may quite properly, in consideration of a claim for workmen's compensation, take into account

the pay received by a claimant under the provisions in Section 486-17c, General Code, relating to sick leave; but this fact could not, as indicated above, affect the right of such employe to such sick leave pay.

Respectfully,

C. WILLIAM O'NEILL
Attorney General