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FILE NO. S-845

**OFFICERS:**

**Vacancies. County Superintendent  
of Highways is Appointed to Serve  
a Six Year Term.**

Honorable Omer T. Shawler  
State's Attorney, Clark County  
Courthouse  
Marshall, Illinois 62441

Dear Mr. Shawler:

I have your letter in which you state:

"In event a County Superintendent of Highways resigns before his six year term of office expires, is his successor in office, appointed under the provisions of Section 5-201 of the Illinois Highway Code, appointed for a full six year term of office or for the unexpired portion of the term of his predecessor in office?"

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Section 5-204 of chapter 121, Illinois Revised Statutes 1973,  
reads as follows:

"§5-204. Whenever the office of county superintendent of highways is vacant, the county board may with the consent in writing of the Department appoint any competent person as acting county superintendent of highways until the vacancy is filled in the manner provided in Section 5-201.

The office shall not be deemed vacant except at the end of the incumbent's 6 year term or in case of his death, his removal from office in accordance with the provisions of section 5-203, or his resignation submitted in writing to the county board. \* \* \* (Emphasis added.)

The above cited language makes it clear that a proper vacancy is declared upon the resignation of the predecessor being submitted in writing to the county board. The manner for filling the vacancy and appointment of a full-time county superintendent of highways is that provided for in section 5-201 of the Illinois Highway Code (Ill. Rev. Stat. 1973, ch. 121, par. 5-201.) The term of office for an appointment so approved is outlined in section 5-202 of the Illinois Highway Code. Ill. Rev. Stat. 1973, ch. 121, par. 5-202:

"§ 5-202. The term of office of each county superintendent of highways is 6 years and until his successor is appointed and qualified. \* \* \* (Emphasis added.)

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The only exception for someone serving other than a full six year term would be either an individual who is serving an interim appointment as acting county superintendent of highways pending a vacancy to be filled, or a present county superintendent of highways serving on a holdover basis until his own incumbency or another appointment has been confirmed. (See 1970 Op. Atty. Gen., 160.) Such is the unambiguous mandate of the statute and so it must be held to mean what it plainly says. City of Decatur v. German, 310 Ill. 591 (1924).

My opinion is consistent with an earlier Attorney General's opinion (1926 Op. Atty. Gen., 454) under a previous statute (Ill. Rev. Stat. 1925, ch. 121, par. 8) which was virtually identical in content to the present section 5-204 supra.

The Attorney General's opinion cited with approval volume 22, Ruling Case Law 256, which read:

"\* \* \* [W]here no time is fixed for the beginning or end of the period during which a public office is to be occupied, and the duration of such period is alone designated, \* \* \* a person selected to fill a vacancy in such office may serve the full term and not merely the unexpired balance of the prior incumbent's term. This is true especially where no authority exists in the legislature for fixing the beginning or the ending of the term, or where

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such authority rests in the Legislature, and the Legislature has not exercised it. The reason for this rule is that when a vacancy happens by death, resignation, or removal, the term is gone and the office reverts, as it did at common law to the crown, to be again filled on like conditions, for the full term prescribed. The application of this rule may be rendered unnecessary by an express constitutional provision that when a vacancy occurs the successor is to be appointed for the balance of the unexpired term, or by a direction that the term of office of such appointee shall extend only to the election and qualification of a successor at the ensuing general election. Statutes to the same effect sometimes takes the place of a declaration in the Constitution on the subject. But the term of office of one appointed to fill a vacancy cannot be limited or extended by the terms of the commission issued to him."

Also, reference was made to volume 50, L.R.A., N.S.,

page 338, which stated:

"Note: Where only the length of the term is fixed by the Constitution or statutes, and neither the commencement nor termination is prescribed and there is nothing establishing a term of office to exist between fixed dates only, nor any reference to an unexpired term, or to a vacancy in the office as distinct from the office itself, one regularly elected or appointed thereto holds his office for the full term, and no part of a previous term during which another held the office, but who has vacated it, enters into the computation of the term for which the appointee holds. These

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cases take the view that under such provisions the vacancy is in the office, and not in the term of the officer; or to state the same proposition in another form, the term of the office never runs apart from the officer."

See 1926 Op. Atty. Gen., 454.

Modern authority also concurs with the references alluded to in the 1926 Attorney General's opinion.

63 Am. Jur. 2d 724, Public Officers and Employees, sec. 155, states:

"Where no time is fixed for the beginning or end of the period during which a public office is to be occupied, and the duration of such period is alone designated, a person selected to fill a vacancy in such office may serve the full term and not merely the unexpired balance of the prior incumbent's term. Marvel v. Camden County, 137 N.J.L. 47, 57 A 2d 455; Boynton v. Heartt, 158 N.C. 488, 74 S.E. 470; State ex rel. Irvine v. Brooks, 14 Wyo. 393, 84 P. 488."

Also, 67 C.J.S. 216, Officers, sec. 53, says:

"When merely the length of the term is fixed, without reference to an unexpired term, or to a vacancy in the term of office, as distinguished from a vacancy in the office itself, it is held in some cases that on the happening of a vacancy the office reverts to the people or sovereign, and when again vested is it not for the unexpired term, but for the

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full term. Cowgill v. Camden County, 137 N.J.L. 51, 57 A 2d 458; State v. Malone, 131 Tenn. 149, 174 S.W. 257."

An examination of the cases cited reveals a general trend common to the courts to adopt the language of the source books without further embellishment or modification.

The case of The People v. Reinberg, 263 Ill. 536, 542 is authority for the principle that when the law does not fix any time for the commencement of a term of office to be filled by appointment the term will begin to run from the date of appointment.

I am of the opinion that your county superintendent of highways will be appointed to serve a full term of six years.

Very truly yours,

A T T O R N E Y G E N E R A L