

On June 20, 1883 the Governor approved an act "To regulate the computation of time under statutes, rules, orders and decrees of court; and under charters and by-laws of corporations, public and private." (P. L. 136) In accordance with the provisions of this act, the period of time shall be computed so as to exclude the first and to include the last day of the prescribed period.

You are therefore advised that the four-year term of a notary public is to be computed to exclude the date of his confirmation. For example, if a notary public's appointment is confirmed by the Senate on February 28, 1931, his term will commence March 1, 1931 and expire at midnight February 28, 1935.

Section 3 of the Act of 1901 provides that where notaries public are re-appointed by the Governor and confirmed by the Senate before the expiration of their commissions, they should each receive a commission for a term of four years, to be computed from the date of the expiration of their previous commission.

The same rule of construction must apply in relation to re-appointments under the provisions of the above section. The new term will be computed from the date of the expiration of the previous commission and will expire at midnight of the day of the fourth anniversary of the date of the commission. In other words, in the case of the notary above instanced, the new term would commence March 1, 1935 and would expire at midnight February 28, 1939.

Very truly yours,

DEPARTMENT OF JUSTICE,

ROSCOE R. KOCH,

Deputy Attorney General.

Justice of the peace—Newly-created borough—Election—Special or municipal election—Appointment by Governor.

1. A justice of the peace is not a borough officer.
2. A special election for the election of a justice of the peace is not authorized by the General Borough Act of May 4, 1927, P. L. 519.
3. When a borough is incorporated, a justice of the peace cannot be chosen at the special election thereafter held for the election of borough officers, he must be appointed by the Governor to hold office until the next municipal election.

Department of Justice,

Harrisburg, Pa., April 25, 1930.

Honorable John S. Fisher, Governor of Pennsylvania, Harrisburg, Pennsylvania.

Sir: The Court of Quarter Sessions of Cambria County entered a decree on January 18, 1930, incorporating the Borough of Geistown, in said county. A special election was held therein on February 25, 1930, whereat one G. N. Good was elected justice of the peace, "to serve until the next Municipal Election." (The quoted words are taken from the certificate of election furnished by the Prothonotary).

Mr. Good has requested the issuance of a commission to him as justice of the peace, for a term to expire, presumably, the first Monday of January following the next municipal election; Constitution, Article V, Section 11; Act of March 2, 1911, P. L. 8. The next municipal election will be held the Tuesday next following the first Monday of November, 1931; Constitution, Article VIII, Section 3; unless the Legislature, perchance, should meantime fix another date, in the manner provided in said article and section.

The contention has been advanced that upon the creation of the Borough of Geistown a vacancy ipso facto existed in the office of justice of the peace, and that the right of the Governor to appoint an incumbent immediately attached to such vacancy. This contention finds support in *Commonwealth ex rel. Snyder vs. Machamer*, 5 D. R. 560.

Mr. Good contends that his election at the special borough election entitles him to a commission, and that the right of the Governor to appoint extended no further than to an appointment to expire on the date of the special borough election.

The authority for a special borough election is found in The General Borough Act, approved May 4, 1927, P. L. 519. Section 805 provides that when the court orders a special election for the election of borough officers in a newly created borough, the officers so elected shall hold office until the first Monday of January next succeeding the municipal election. Section 807 lists the officers to be elected, but excludes from said list the office of justice of the peace, which is entirely in harmony with the provisions of Section 102, which distinctly provides:

"This act does not include any provisions, and shall not be construed to repeal any acts, relating to:

* * * * *

"(i) Justice of the peace."

It therefore goes without saying that a special election for the

election of justice of the peace, is not authorized under the provisions of The General Borough Act of 1927.

Nor is it contended that a justice of the peace is a borough officer: *Commonwealth ex rel. Attorney General vs. Callen*, 101 Pa. 375; *Commonwealth ex rel. Graham vs. Cameron*, 259 Pa. 209.

The Act of April 3, 1851, P. L. 320, Section 26, authorizes the electors in any newly incorporated borough, "at the first borough election to elect six school directors under the provisions of the law regulating common schools, and two justices of the peace to serve for a term of five years, and thereafter to elect justices of the peace and school directors as directed by law."

But Article V, Section 11 of the Constitution, both as originally adopted and as amended in 1909, seriously affected the Act of 1851. As amended, said article and section provide for the election of justices of the peace at the municipal election, for a term of six years. There is no provision, either in the Constitution, or in any Act of Assembly enacted after its adoption, that provides for a *special* election of a justice of the peace. It seems clear, therefore, that Section 26 of the Act of 1851, as applicable to the question here under consideration, is inconsistent with the provisions of the Constitution, that justices of the peace may be elected only at the municipal election.

It has been the unbroken practice of your predecessors to refuse to issue commissions to persons claiming to have been elected to the office of justice of the peace at special elections. This practice should not be changed, in our opinion: first, because there has been no argument advanced that convinces us that the practice is legally unsound; and second, because it is always wise, in cases of doubt, to refrain from issuing a commission until the party claiming the same has tested out his right thereto by appropriate action.

Attorney General McCormick advised the Secretary of the Commonwealth, in an opinion rendered June 3, 1896, (5 D. R. 437) that it was the duty of the Governor to appoint an alderman in a newly created ward in the city of Harrisburg. Another person was later elected to the office at a special ward election, and obtained a rule to show cause why a quo warranto should not issue against the Governor's appointee. The Attorney General's ruling was vindicated by the Court of Common Pleas of Dauphin County, (*Commonwealth ex rel. Snyder vs. Machamer*, 5 D. R. 560). The situation here presented is very similar, and we therefore advise that in our opinion there exists a vacancy in the office of justice of the peace in Geistown Borough, and that the same may lawfully be filled only by appointment by the Governor, until the person elected at the next municipal election is entitled to

enter upon his term of six years. Article IV, Section 8, of the Constitution, as amended November, 1909.

Very truly yours,

DEPARTMENT OF JUSTICE,

ROSCOE R. KOCH,

Deputy Attorney General.

Elections—Representatives in Congress—Vacancy—Special election—Issue of writ by Governor—U. S. Constitution, art. i, sections 2 and 4—Time for, election—Act of July 2, 1839.

1. Where a vacancy has occurred in the representation in Congress from this state since the last session of that body, it is the duty of the Governor, pursuant to article i, sections 2 and 4, of the Constitution of the United States, to issue a writ of election to fill such vacancy.

2. If the vacancy happens during a session of Congress or if Congress is required to meet prior to the next general election in this state, the Governor must fix a time for such election as early as may be convenient, as required by the Act of July 2, 1839, P. L. 519; otherwise, he should direct the election to be held at the same time as the general election, giving reasonable time for the promulgation of the notice thereof.

Department of Justice,

Harrisburg, Pa., September 11, 1930.

Honorable John S. Fisher, Governor of Pennsylvania, Harrisburg, Pennsylvania.

Sir: We have your request under date of September 8, for an interpretation of, and procedure under, Article I, Section 2, of the United States Constitution, where a vacancy has occurred in the representation in Congress from this State since the last session of Congress. The next session will convene the first Monday of December, 1930. You desire to be advised whether or not the issuance of a writ of election prior to the convening of the short term of Congress is mandatory.

Article I, Section 2, paragraph 4, of the Constitution of the United States, provides:

“When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.”

Article I, Section 4, paragraph 1, provides:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress