

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.*

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*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

may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

The Act of July 2, 1839, P. L. 519, Sections 39 to 42 inclusive, provide for the issuance and requisites of the writ of election, time of election, and when writ shall be delivered to the sheriff.

"Every writ which shall be issued by the governor of this commonwealth, in pursuance of the constitution of the United States, to supply a vacancy in the representation of the people of this commonwealth in the house of representatives of the United States, shall be directed to the sheriff of the county, or counties, composing the congressional district, and shall particularly express the day on which the election shall be held to supply such vacancy. (1839, July 2, P. L. 519, Section 39).

"If such vacancy shall happen during the session of congress, or if congress shall be required to meet at some time previous to the next general election, the governor shall appoint a time as early as may be convenient for holding such election, otherwise he shall direct the election to be held at the time appointed for holding the general elections. (1839, July 2, P. L. 519, Section 40).

"Every writ for holding a special election, as aforesaid shall be delivered to the sheriff, to whom the same may be directed, at least fifteen days before the day appointed for such election, who shall forthwith give due and public notice thereof throughout the county, at least ten days before such election, and shall send a copy thereof to at least one of the inspectors of each election district therein. (1839, July 2, P. L. 519, Section 41)."

Article VIII, Section 2, of the Constitution of Pennsylvania, provides:

"The general election shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto: Provided, That such election shall always be held in an even-numbered year."

Where the legislature of a state has failed to "prescribe the times, places and manner" of holding elections, as required by the Constitution of the United States, the Governor may, in case of a vacancy, in his writ of election, give notice of the time and place of election, but a reasonable time ought to be allowed for the promulgation of the notice:

*Hoge's Election Case, (1804), H. R. Contested Election Cases, 52, I Watson on the Constitution, 200.*

Since the decision in the Hoge Election, the Legislature of Pennsylvania, pursuant to the provisions of Article I, Section 4, of the Constitution of the United States, enacted Sections 39 to 42 of the Act of July 2, P. L. 519, *supra*.

In our opinion, and you are so advised, the writ which shall be issued by the Governor of this Commonwealth to fill a vacancy now existing in the representation in Congress from this State should direct the election to be held at the time for holding the next general election, to wit: Tuesday, next following the first Monday of next November, and should be delivered to the sheriff, to whom the same may be directed, in sufficient time to permit the sheriff to give the notice required by law, and that those provisions are mandatory.

Very truly yours,

DEPARTMENT OF JUSTICE,

S. M. R. O'HARA,

*Deputy Attorney General.*

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*United States Department of Commerce, Population Bulletin as per fifteenth census of the United States.*

Form of certificate to be issued by the Governor. Act of 1919, P. L. 887.

Department of Justice,

Harrisburg, Pa., December 24, 1930.

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

Sir: We have your request to be advised on three questions as follows:

1. Can you regard as official a printed but uncertified "population bulletin" issued by the Department of Commerce and purporting to contain the number and distribution of the inhabitants of Pennsylvania, as per the fifteenth census of the United States?
2. Is the form of certificate attached to your inquiry appropriate for elevating to a higher classification a county whose population entitles it to reclassification under the Act of July 10, 1919, P. L. 887?
3. Do you have authority, by certificate, to reduce in classification a county whose population, as shown by the last census, is less than that required to include it in the class to which it now belongs?