

ORIGINAL

**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO, ex rel. TIMOTHY )  
A. SWANSON, et al., )  
 )  
Relators, )  
 )  
vs. )  
 )  
STARK COUNTY DEMOCRATIC )  
CENTRAL COMMITTEE, et al., )  
 )  
Respondents. )

CASE NO. 2013-1822

*ORIGINAL ACTION IN  
MANDAMUS*

---

**MOTION FOR ANCILLARY INJUNCTIVE RELIEF,  
INCLUDING TEMPORARY RESTRAINING ORDER,  
SUSPENDING ANY PROCESS OR PROCEDURE FOR  
SUBMISSION OF NEW APPLICATIONS FOR THE VACANCY  
IN THE OFFICE OF STARK COUNTY SHERIFF**

*EXPEDITED CONSIDERATION REQUESTED*

---

Gregory A. Beck (0018260)  
(Counsel of Record)  
James F. Mathews (0040206)  
BAKER, DUBLIKAR, BECK  
WILEY & MATHEWS  
*bakerfirm.com*  
400 South Main Street  
North Canton, Ohio 44720  
Phone: (330) 499-6000  
Fax: (330) 499-6423  
E-mail: [beck@bakerfirm.com](mailto:beck@bakerfirm.com)  
[mathews@bakerfirm.com](mailto:mathews@bakerfirm.com)  
Counsel for Relators

**FILED**  
NOV 22 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

**MOTION FOR ANCILLARY INJUNCTIVE RELIEF,  
INCLUDING TEMPORARY RESTRAINING ORDER,  
SUSPENDING ANY PROCESS OR PROCEDURE FOR  
SUBMISSION OF NEW APPLICATIONS FOR THE VACANCY  
IN THE OFFICE OF STARK COUNTY SHERIFF**

*EXPEDITED CONSIDERATION REQUESTED*

Relators, Timothy A. Swanson and Lou Darrow, respectfully move this Court for an order granting ancillary injunctive relief, including a temporary restraining order, restricting the applicants for sheriff to those applicants who were deemed qualified as of February 6, 2013. To that end, the relators request an order directing the respondents, Stark County Democratic Central Committee and Chairman Randy Gonzalez, to suspend all processes or procedures designed to permit the processing of new applications for the vacancy in the Office of Stark County Sheriff. Only applications that were timely submitted by eligible candidates for appointment, vetted and forwarded to the respondents prior to the “applicable qualification date” of February 6, 2013 may be considered for the purpose of filling the vacancy in question, created by the inability of Sheriff-elect, Michael A. McDonald, to take office following his election.

The respondents have scheduled a meeting of the Stark County Democratic Central Committee for December 11, 2013, in Canton, Ohio. Further, the respondents have publicly announced that they are treating this Court’s prior decision in *State ex rel. Swanson v. Maier*, \_\_\_ Ohio St. 3d \_\_\_, 2013-Ohio-4767, as creating a “new vacancy” with a “new qualification date” of December 6, 2013 (thirty days after the Court’s decision). The applicable “qualification date” for the McDonald vacancy set forth succinctly in the Court’s opinion is actually February 6, 2013. *Swanson v. Maier*, at ¶28. The respondents should not be permitted to promote or accept a new application process or procedure which is not provided for by law.

To allow for the full consideration of the relators' claims in this case, the relators respectfully request expedited consideration of this motion.

Relators' motion is supported by the complaint, memorandum and affidavits in support, and the accompanying memorandum, which are fully incorporated herein.

Respectfully submitted,



Gregory A. Beck (0018260)  
(Counsel of Record)

James F. Mathews (0040206)  
BAKER, DUBLIKAR, BECK  
WILEY & MATHEWS  
400 South Main Street  
North Canton, Ohio 44720  
Phone: (330) 499-6000  
Fax: (330) 499-6423  
E-mail: beck@bakerfirm.com  
mathews@bakerfirm.com  
Counsel for Relators

### **MEMORANDUM IN SUPPORT**

#### **I. INTRODUCTION.**

The relators filed this *mandamus* action on November 18, 2013. As set forth more-fully in the complaint and memorandum in support, there remains a vacancy in the Office of Stark County Sheriff. That vacancy was created on January 7, 2013, when the Sheriff-elect, Michael A. McDonald, gave notice that he was unable to assume office for personal health reasons. The term of office which remains to be filled is that of Sheriff-elect McDonald. Relators maintain that the jurisdiction and authority of the respondent, Stark County Democratic Central Committee ("DCC"), is confined to consideration for the appointment to that vacancy from those eligible and legally-

qualified candidates who timely submitted and processed their applications for that vacancy prior to the “applicable qualification date” of February 6, 2013. See, *State ex rel. Swanson v. Maier*, \_\_\_ Ohio St. 3d \_\_\_, 2013-Ohio-4767, ¶28. See also, R.C. 311.01(B)(6), (7), and (H)(1).

As addressed in relators’ memorandum, the DCC already held a timely meeting under R.C. 305.02(C), on February 5, 2013. At that time, two applicants, relator Lou Darrow and another, Larry Dordea, were deemed qualified by the DCC for the appointment. (Relators’ Memorandum in Support of Writ, Exhibit C, ¶¶8, 10). Nevertheless, the DCC has scheduled a meeting for December 11, 2013, in Canton, Ohio. (See, *CantonRep.com*, [Stark Democrats to meet Dec. 11 to appoint new sheriff](#), Nov. 16, 2013). At that time, the respondents intend to consider appointment to the vacancy at issue. If the meeting was merely for the purpose of advancing and completing the process begun early in January and February of 2013, under R.C. 305.02, then proceeding would be entirely in order. However, the respondents are treating the Court’s recent ouster of George T. Maier as creating a “new vacancy” in the Office of Sheriff. Thus, the respondents are intent on permitting new applications to be submitted for consideration, including another application by Maier, premised upon the unfounded notion that a new qualification date (December 6, 2013) exists. “Maier will seek the appointment again.” *Id.*

There is no “new vacancy.” There is no “new qualification date.” The respondents should not be permitted to play fast and loose with appointment authority. The respondents must, necessarily, know that the McDonald vacancy in the *only* vacancy which rests within the appointment authority at this time. As addressed more-fully in the relators’ Memorandum in Support of Writ, two qualified and eligible people, including relator Lou Darrow, timely qualified for the subject vacancy prior to the qualification date of February 6, 2013. This is, for purposes of the

record, fully admitted by the respondent, Randy Gonzalez, in his prior affidavit submitted in the *Maier* case. (See, Memorandum in Support, Exhibit C, ¶8). This is further demonstrated by the minutes of the DCC's prior meeting held on February 5, 2013. (See, Memorandum in Support, Exhibit C, attachment 2).

This Court announced its decision in the *Maier* case on November 6, 2013. Therein, the Court ousted George T. Maier from the office of sheriff and reinstated Timothy A. Swanson as acting sheriff. *Id.*, ¶40. The respondents have interpreted the Court's decision as creating a "new vacancy" in the Office of Stark County Sheriff. As addressed below, this Court's reinstatement of Swanson as acting Sheriff directly undermines the respondents' interpretation. In any event, at their meeting of the DCC set for December 11, 2013, the respondents intend to entertain any and all applications for the position of sheriff submitted by a "new" qualification date of December 6, 2013. Because there is no new vacancy created by the judicial ouster of Maier, there is no new qualification date. Consequently, the respondents should be ordered to suspend any process by which "new applicants" for the office of sheriff may submit applications for consideration.

## **II. THIS COURT SHOULD MAINTAIN THE STATUS QUO.**

If the respondents are not enjoined during the pendency of this case, and some person is appointed to the Office of Sheriff based upon an application received, reviewed and containing credentials dated *after* the applicable qualification date of February 6, 2013, another suit in *quo warranto* would likely result. Given the clarity of the Court's prior decision in *Maier*, it is unfortunate that the relators have had to resort to this suit in *mandamus* as a vehicle for protecting their interests and preserving the integrity of the appointment process. The relators' prompt utilization of the *mandamus* procedure should not be undermined or defeated by the respondents.

In addition, future litigation in *quo warranto*, which can be avoided by this case, should be avoided if at all possible.

As the Court is well-aware, original actions such as this are governed by the Civil Rules unless the Civil Rules are “clearly inapplicable.” S.Ct. Prac. R. 12.01(A)(2)(b) [former 10.2]. Civil Rule 65(A) provides a mechanism for the issuance of temporary restraining orders. “The purpose of a TRO or preliminary injunctive relief is to preserve the status quo.” *Brookville Equip. Corp. v. Cincinnati Enquirer*, 2012-Ohio-3648, ¶10 (1<sup>st</sup> Dist.). Generally, there are four factors that courts must consider in deciding to grant a TRO or preliminary injunction. *Id.*, *Valco Cincinnati, Inc. v. N & D Machining Service, Inc.* (1986), 24 Ohio St.3d 41, as cited in *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co., Gen Commodities Div.* (1996), 109 Ohio App.3d 786, 788. A court must look at (1) whether there is a substantial likelihood that plaintiff will prevail on the merits, (2) whether plaintiff will suffer irreparable injury if the injunction is not granted, (3) whether third parties will be unjustifiably harmed if the injunction is granted, and (4) whether the public interest will be served by the injunction. “A court must balance all four factors in determining whether to grant or deny injunctive relief, and no one factor is determinative.” *Brookville*, ¶11.

There is a substantial likelihood that the relators will prevail on the merits of their claims in *mandamus*. There is but one vacancy in the Office of Stark County Sheriff to fill at this time; namely, the vacancy created January 7, 2013, when the sheriff-elect was unable to take office. The “applicable qualification date” fixed by law for the vacancy was February 6, 2013. *Swanson v. Maier*, ¶28. It is not disputed that two individuals timely completed applications and complied with all aspects of the qualifications set forth in R.C. 311.01 prior to the applicable qualification date. Given the record, and this Court’s ruling in *Maier*, the respondents have a clear legal duty to consider

only the applications for appointment that were in compliance with R.C. 311.01 and were timely submitted prior to the applicable qualification date. Timely submission is itself a qualification which one must satisfy under R.C. 311.01 for prospective appointment. See, R.C. 311.01(B)(6), (7). These matters are more-fully addressed in the relators' Memorandum in Support.

The absence of a "new vacancy" is perhaps best drawn from R.C. 305.02(F) itself and the facts of this case. It is undisputed that, following the McDonald vacancy, relator Swanson was appointed by the Stark County Commissioners to serve as acting Sheriff. See, *Swanson v. Maier*, at ¶7. Upon such appointment, "Swanson took the oath and was bonded as acting sheriff." *Id.*

Relator Swanson was appointed under the authority of R.C. 305.02(F):

The board of county commissioners may appoint a person to hold any of the offices named in division (A) of this section as an acting officer and to perform the duties thereof between the occurrence of **the vacancy** and the time when the officer appointed by the central committee qualifies and takes the office.

(Emphasis added). Again, as part of the prior *quo warranto* action, this Court not only ousted Maier but also reinstated Swanson as acting Sheriff. *Id.*, ¶40.

Swanson's appointment under R.C. 305.02(F) extends from "between the occurrence of the vacancy" and the time when a qualified, eligible officer is appointed by the DCC. In other words, the Swanson appointment operates along the continuum from the occurrence of "the vacancy," meaning the McDonald vacancy which occurred January 7, 2013, and the time a qualified officer is appointed by the DCC, which is yet to occur. Swanson's actual service as acting sheriff was interrupted by Maier's usurpation of the office. However, Swanson's lawful appointment as acting sheriff was never interrupted. That is why this Court reinstated Swanson based upon his original appointment by the County Commissioners upon the occurrence of the McDonald vacancy.

If, as the respondents now contend, the judicial ouster of Maier somehow created a “new vacancy,” then the County Commissioners would have been called upon again to make an interim or acting appointment under R.C. 305.02(F). Of course, the Commissioners were not required to do so precisely because there had not been the occurrence of any new vacancy. Swanson was reinstated consistent with his appointment by the Commissioners, and he is duly serving as acting Sheriff. Swanson’s entitlement to the appointment as acting Sheriff has already been judicially established in *Maier* and is not subject to collateral attack. Swanson’s lawful appointment as acting Sheriff will continue from the occurrence of the vacancy until the appointment of a qualified candidate to the McDonald vacancy. Importantly, appointment under the “exception” clause of R.C. 305.02(B) “relates to the appointment of an individual to begin the term of an officer-elect who has died, has resigned, or is unable to take office.” *1984 Ohio Op. Atty. Gen. No. 63, \*6* (Emphasis added). In other words, the person who is ultimately appointed by the DCC is appointed for *the term* of the officer-elect who could not assume office. That person must have been qualified by the close of the applicable qualification date for that term.

The relators will suffer irreparable injury if ancillary injunctive relief is not granted. Both relators have the right (one as the acting, interim Sheriff, and the other as an applicant for appointment who met all requirements for the appointment prior to February 6, 2013) to have the appointment authority of the respondent DCC carried out in compliance with Ohio law. There is no process in the law to require relator Darrow to qualify again. There is no process in the statutes permitting the DCC to “re-open” the qualification date, merely because it previously appointed an unqualified applicant who was subject to judicial ouster. Relator Darrow has complied with all requirements to date, substantively and procedurally, and the process he legally commenced prior

to the qualification date of February 6, 2013 must be recognized and accorded legitimate status.

Third parties will not be harmed by any order, rather, they would be unjustifiably harmed in the absence of ancillary injunctive relief. Because there is no “new qualification date” for appointment to the McDonald vacancy, the public should not be misled otherwise. As set forth above, if some person is appointed to the Office of Sheriff based upon an application received, reviewed and containing any form of proposed credentials dated *after* the applicable qualification date of February 6, 2013, another suit in *quo warranto* may well follow. The prospective exposure to such litigation can be avoided through timely injunctive relief in this case, for consideration of the merits.

Finally, the public interest will be served by maintaining the status quo. Stark County is currently being duly served by a well-qualified Sheriff, Timothy A. Swanson. Relator Swanson is, however, serving on an interim basis, and the residents of Stark County deserve to have a qualified officer appointed to fill the McDonald vacancy – to fill the McDonald term. The public, of course, further deserves to have that appointment completed in compliance with Ohio law governing appointment procedures. The public should not have to bear having another unqualified person potentially appointed to the McDonald vacancy, creating only further uncertainty and litigation.

This Court is also authorized to issue ancillary injunctive relief as a matter of its inherent authority to preserve the status quo. The Court’s original jurisdiction “implies power to make all such orders as may be appropriate to the case presented and necessary to give practical effect to the final judgment, as well as to preserve the subject of the action, pending the final determination of the case.” *State ex rel. Ellis v. Bd. of Deputy State Supervisors* (1904), 70 Ohio St. 341, 349. As perhaps best stated in the case of *State ex rel. City of Cleveland v. Court of Appeals* (1922), 104 Ohio

St. 96:

That the court has jurisdiction in equity, pending the final determination of the case, in the interest of justice, to make such interlocutory injunctive orders as may be necessary to preserve the rights of the parties in the subject-matter of the controversy, to the end that the final judgment of the court may not be defeated by the action of either party to the litigation in advance of the rendition of such judgment has long been the law . . . .

*Id.*, p. 105. “This court has power to grant an injunction *pendente lite* as ancillary to a cause of which it has jurisdiction, in order to preserve matters in status quo.” *Copperweld Steel Co. v. Industrial Comm. of Ohio* (1944), 142 Ohio St. 439, 443. In this case, a final judgment on the relators’ claims in *mandamus* would not afford complete relief if the respondents are, in the face of the pending case, permitted to proceed to deviate from the appointment process and consider “new applications” based upon a “new qualification date” they created.

The respondents appear to be losing sight of the objective of R.C. 305.02. The process set forth therein for completing an appointment to a vacant county office must, necessarily, be triggered by a vacancy. The Office of Stark County Sheriff became vacant when McDonald could not assume the office and the term of office to which he was elected, beginning January 7, 2013. *Swanson v. Maier*, ¶28. The McDonald term is that which must be filled by a legally-qualified appointee.

George T. Maier did not have any term in office as Stark County Sheriff. To the contrary, he was judicially ousted, and that ouster is treated as though his appointment to the position had never occurred. (*See*, Memorandum in Support of Writ). Inasmuch as Maier served no term in office, his ouster did not create any new vacancy.

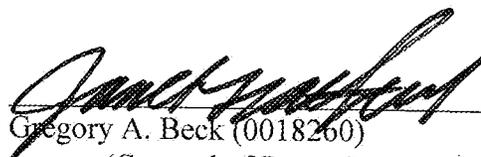
The appointment process, for elective office, is inextricably tied to the election process. Thus, for instance, the official appointed to fill the McDonald vacancy will be required to sit for election at the next General Election for county offices, in the Fall of 2014, in order to retain the

office. "When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until the appointee's successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; . . . ." R.C. 3.02. Again, "[t]he exception [in R.C. 305.02(B)] relates to the **appointment** of an individual to **begin the term of an officer-elect** who has died, has resigned, or is **unable to take office.**" 1984 Ohio Atty. Gen. No. 63, \*6 (Emphasis added). That election will be for the "unexpired term" for which McDonald was elected. The officer who sits for election in the Fall of 2014 will not, somehow, be seeking election to the balance of George Maier's "term" in office. Maier had no lawful term in office, and his judicial ouster did not create a vacancy.

### **III. CONCLUSION.**

There are significant issues to be determined by this Court in this *mandamus* action. In the interim, this Court should order the respondents to suspend any further measures under which "new applications" (any falling after the applicable qualification date of February 6, 2013, and any containing credentials created after the qualification date) for the vacancy in the Office of Stark County Sheriff may be submitted, processed and considered.

Respectfully submitted,



Gregory A. Beck (0018260)

(Counsel of Record)

James F. Mathews (0040206)  
BAKER, DUBLIKAR, BECK  
WILEY & MATHEWS  
400 South Main Street  
North Canton, Ohio 44720

Phone: (330) 499-6000  
Fax: (330) 499-6423  
E-mail: beck@bakerfirm.com  
mathews@bakerfirm.com  
Counsel for Relators

**PROOF OF SERVICE**

Copies of the foregoing motion were served by regular U.S. mail and e-mail transmittal (or fax transmittal) this 22 day of November, 2013, to:

Allen Schulman, Jr., Esq.  
*info@lawyersonyourside.com*  
Warren R. Price, Esq.  
*warrenrprice@icloud.com*  
Allen Schulman and Associates  
Carnegie Building  
236 Third Street, SW  
Canton, Ohio 44702  
Counsel for Respondents

Michael A. Thompson, Esq.  
*thompsonlaw@sssnet.com*  
4774 Munson Street, NW, Suite 400  
Canton, Ohio 44718  
Counsel for Respondents

Steve P. Okey, Esq.  
*sokey@okeylawfirm.com*  
The Okey Law Firm, L.P.A.  
337 Third Street, N.W.  
Canton, Ohio 44702-1786  
Counsel for Respondents

The Stark County Democratic Party  
*starkcountydems@gmail.com*  
4220 12<sup>th</sup> Street, NW  
Canton, Ohio 44708  
Fax: 330-477-0724  
Respondent

The Stark County Democratic Party  
Randy Gonzalez, Chairman  
*starkcountydems@gmail.com*  
4220 12<sup>th</sup> Street, NW  
Canton, Ohio 44708  
Fax: 330-477-0724  
Respondent



---

Gregory A. Beck

(Counsel of Record)

James F. Mathews  
BAKER, DUBLIKAR, BECK  
WILEY & MATHEWS



1 of 1 DOCUMENT

Page's Ohio Revised Code Annotated:  
Copyright (c) 2013 by Matthew Bender & Company, Inc., a member of the LexisNexis Group.  
All rights reserved.

Current through Legislation passed by the 130th Ohio General Assembly  
and filed with the Secretary of State through File 38  
\*\*\* Annotations current through August 16, 2013 \*\*\*

TITLE 3. COUNTIES  
CHAPTER 305. BOARD OF COUNTY COMMISSIONERS -- GENERALLY

**Go to the Ohio Code Archive Directory**

*ORC Ann. 305.02 (2013)*

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

§ 305.02. Filling vacancy in county offices [Effective until June 21, 2013]

(A) If a vacancy in the office of county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, or coroner occurs more than fifty-six days before the next general election for state and county officers, a successor shall be elected at such election for the unexpired term unless such term expires within one year immediately following the date of such general election.

In either event, the vacancy shall be filled as provided in this section and the appointee shall hold office until a successor is elected and qualified.

(B) If a vacancy occurs from any cause in any of the offices named in division (A) of this section, the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, except that if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated.

(C) Not less than five nor more than forty-five days after a vacancy occurs, the county central committee shall meet for the purpose of making an appointment under this section. Not less than four days before the date of such meeting the chairperson or secretary of such central committee shall send by first class mail to every member of such central committee a written notice which shall state the time and place of such meeting and the purpose thereof. A majority of the members of the central committee present at such meeting may make the appointment.

(D) If the last occupant of the office or the officer-elect was elected as an independent candidate, the board of county commissioners shall make such appointment at the time when the vacancy occurs, except where the vacancy is in the office of county commissioner, in which case the prosecuting attorney and the remaining commissioners or a majority of them shall make the appointment.

(E) Appointments made under this section shall be certified by the appointing county central committee or by the board of county commissioners to the county board of elections and to the secretary of state, and the persons so appointed and certified shall be entitled to all remuneration provided by law for the offices to which they are appointed.

(F) The board of county commissioners may appoint a person to hold any of the offices named in division (A) of this section as an acting officer and to perform the duties thereof between the occurrence of the vacancy and the time when the officer appointed by the central committee qualifies and takes the office.

(G) A person appointed prosecuting attorney or assistant prosecuting attorney shall give bond and take the oath of office prescribed by *section 309.03 of the Revised Code* for the prosecuting attorney.

**HISTORY:**

RS §§ 841, 842; S 243, 244; 51 v 422, §§ 3, 4, 5; 98 v 272; GC §§ 2396, 2397; 117 v 81; 118 v 574; Bureau of Code Revision, 10-1-53; 126 v 205; 127 v 894 (Eff 8-30-57); 129 v 1365 (Eff 10-12-61); 130 v 191 (Eff 8-26-63); 130 v 190 (Eff 6-28-63); 143 v S 196. Eff 6-21-90; 153 v H 48, § 1, eff. 7-2-10.



LexisNexis®

1 of 100 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF OHIO

OPINION No. 84-063

*1984 Ohio Op. Atty Gen. No. 63; 1984 Ohio AG LEXIS 48*

October 18, 1984

**SYLLABUS:**

[\*1]

When a vacancy in any of the offices named in *R.C. 305.02(A)* occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, the person appointed to take such office by the central committee of the political party with which such officer-elect was affiliated shall hold office until a successor is elected and qualified, and a successor shall be elected at the next general election for state and county officers.

**REQUESTBY:**

ANTHONY J. CELEBREZZE, JR., Attorney General

**OPINION:**

The Honorable Peter R. Seibel  
Defiance County Prosecuting Attorney  
509 Second Street  
Defiance, Ohio 43512

I have before me your letter requesting a formal legal opinion concerning the application of *R.C. 305.02* to a particular set of facts. *R.C. 305.02* states, in relevant part:

(A) If a vacancy in the office of county commissioner, prosecuting attorney, county auditor, county treasurer, clerk of the court of common pleas, sheriff, county recorder, county engineer, or coroner occurs more than forty days before the next general election for state and county officers, a successor shall be elected at such election for the unexpired term unless such term [\*2] expires within one year immediately following the date of such general election.

In either event, the vacancy shall be filled as provided in this section and the appointee shall hold his office until a successor is elected and qualified.

(B) If a vacancy occurs from any cause in any of the offices named in division (A) of this section, the county central committee of the political party with which the last occupant of the office was affiliated shall appoint a person to hold the office and to perform the duties thereof until a successor is elected and has qualified, except that if such vacancy occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, an appointment to take such office at the beginning of the term shall be made by the central committee of the political party with which such officer-elect was affiliated. (Emphasis added.)

In the situation which you have outlined, a county officer-elect, prior to taking office, resigned the office to which she had been elected, and subsequently died before the term began. Upon the resignation of the officer-elect, the county central committee of the political [\*3] party with which the officer-elect was affiliated, acting pursuant to *R.C. 305.02(B)*, appointed an individual to take the office at the beginning of the term. Your question is whether the appointee holds the office for the entire term, or whether an election for the office should be held at the next general election for county officers, which will be some two years prior to the end of the term. See, e.g., Ohio Const. art. XVII, § 1 ("[e]lections for state and county officers shall be held on the first Tuesday after the first Monday in November in

even numbered years. . . ."); *R.C. 319.01* (county auditor is chosen quadrennially); *R.C. 3501.01(A)* (defining "general election"); *R.C. 3501.02(C)* (elective county officers are elected at general elections in the even-numbered years); *State ex rel. Harsha v. Troxel*, 125 Ohio St. 235, 181 N.E. 16 (1932) (holding that, where a county auditor elected in 1930 resigned during the first year of his four-year term and an appointment was made to fill the vacancy, the successor to the appointee must be elected at the next general election for county officers--that is, the election held in 1932).

Your question focuses on the [\*4] exception set forth in *R.C. 305.02*--that in the case of a vacancy occurring because of the death, resignation, or inability to take office of an officer-elect, an appointment to take the office at the beginning of the term shall be made by the central committee--and in particular upon the fact that this exception does not include the language "and to perform the duties thereof until a successor is elected and has qualified." You have stated your concern as follows:

It would appear as though the legislature has indicated that if a vacancy occurs once an elected official has taken office then an appointment shall be made until the next general election. (Unless the vacancy occurs less than 40 days before the next general election.) However, if the officer-elect has not yet taken office, it would appear the legislature has intended that the central committee shall appoint a person to take office at the beginning of the term and serve the full term, since the legislature has not indicated the need for the subsequent election of a successor at the next general election.

It does not seem logical to make the apparent differentiation between an officer-elect not taking office and an officer-elect [\*5] actually taking office. The legislative intent would seem to be that the voters should have an option at the next general election to rechoose and that the appointment by the county central committee would be only temporary pending the [voters'] ability to rechoose. However, this is not what the statute says and despite the apparent inconsistency it would appear as though our legislature (who are our elected representatives) has indicated that a new election is required only when the officer dies having once taken office.

I appreciate your concern that the language of *R.C. 305.02* is susceptible to more than one possible interpretation. I believe, however, that when *R.C. 305.02(B)* is read together with *R.C. 305.02(A)*, and in the context of other related provisions, the meaning of its language becomes clear. See generally *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph 2) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are in pari materia and should be read together to ascertain and effectuate if possible the legislative intent"). [\*6]

*R.C. 305.02(A)* provides that, if a vacancy occurs in one of the specified county offices more than forty days before the next general election for state and county officers, a successor for the unexpired term shall be elected at that election, unless the unexpired term expires within one year of the election. It goes on to state generally, however, that, "[i]n either event [that is, regardless of whether a successor is to be elected for the unexpired term], the vacancy shall be filled as provided in this section and the appointee shall hold his office until a successor is elected and qualified." *R.C. 305.02(B)* sets forth the manner in which appointments are to be made to fill such vacancies. The first part of this division states that a vacancy is to be filled by the county central committee of the political party with which the last occupant of the office was affiliated, and that the appointee shall perform the duties of the office until a successor is elected and has qualified. The exception relates to the appointment of an individual to begin the term of an officer-elect who has died, has resigned, or is unable to take office. It does not specify how long that person is to [\*7] hold office and, if that exception is read by itself, it may lead to the apparently illogical result that you have pointed out. I believe, however, that when *R.C. 305.02(A)* and (B) are read together, it is clear. I believe, however, that when *R.C. 305.02(A)* and (B) are read together, it must be concluded that the exception of *R.C. 305.02(B)* is qualified by the language of *R.C. 305.02(A)* which states that a vacancy is to be filled as provided in *R.C. 305.02*, the appointee is to hold his office until a successor is elected and qualified, and a successor shall be elected at the next general election for state and county officers. See generally *State ex rel. Pratt v. Weygandt*. In 1969 Op. Atty Gen. No. 69-052, at 2-113, one of my predecessors reached the same conclusion: "This last quotation [exception of *R.C. 305.02(B)*] makes no mention of the time to be served by the appointee, but Subsection (A) is in pari materia with Subsection (B) and must be considered applicable."

This conclusion is consistent with the general constitutional and statutory scheme governing vacancies in office. Ohio Const. art. II, § 27 provides generally that "[t]he election and appointment of all [\*8] officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law. . . ." Accord Ohio Const. art. XVII, § 2 ("[a]ll vacancies in other [than state] elective offices shall be filled for the unexpired term in such manner as may be prescribed by this constitution or by law"). *R.C. 3.02* states in part:

When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term.

When an elected candidate fails to qualify for the office to which he has been elected, the office shall be filled as in the case of a vacancy. Until so filled, the incumbent officer shall continue [\*9] to hold the office. (Emphasis added.)

This language is, by its terms, applicable to elected county officers, and, when read in *pari materia* with *R.C. 305.02*, supports the conclusion that, when an elected candidate for some reason does not take office, the office shall be filled by appointment and a successor shall be elected at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred, unless the unexpired term ends within a year of the election. The next general election for a county office is the next election held in November of an even-numbered year. Ohio Const. art. XVII, § 1; *R.C. 3501.01(A)*; *R.C. 3501.02(C)*; *State ex rel. Harsha v. Troxel*.

Similar language providing, in general, for filling a vacancy by appointment and electing a successor at the next general election appears in Ohio Const. art. III, § 18 (certain elective state offices); art. IV, § 13 (judges); and art. XVII, § 2 (certain elective state offices). See also *R.C. 503.24* (township offices); *R.C. 733.25* (mayor of a village); *R.C. 3313.11* (providing for special elections to fill vacancies in boards of education); 1927 [\*10] Op. Atty Gen. No. 946, vol. III, p. 1651. But see *R.C. 733.31* (certain elective offices of villages shall be filled by appointment by the mayor for the remainder of the unexpired term). The philosophy behind such language was aptly expressed by the Ohio Supreme Court in *State ex rel. Harsha v. Troxel*, 125 Ohio St. at 238, 181 N.E. at 17: "[i]t is the policy of the law that the people shall be served by the servants of their own selection, and the laws relative to filling vacancies in elective offices will be construed so as to give the people the opportunity to choose at the earliest possible time the successor to an official they have previously chosen." (Emphasis added.) Thus, I find that the interpretation which you present as the more logical one is also supported by relevant statutory language and policy considerations.

In conclusion, it is my opinion, and you are hereby advised, that when a vacancy in any of the offices named in *R.C. 305.02(A)* occurs because of the death, resignation, or inability to take the office of an officer-elect whose term has not yet begun, the person appointed to take such office by the central committee of the political party with which [\*11] such officer-elect was affiliated shall hold office until a successor is elected and qualified, and a successor shall be elected at the next general election for state and county officers.