

OPINION
45-217

August 27, 1945 (OPINION)

OFFICE

RE: Public - Incumbent Dead - Office Continues

Your letter of August 25 addressed to the attorney general has been received and contents carefully noted.

You state that the state auditing board requests an opinion upon the following question: "Should the auditing board recognize the signature of any individual in the insurance department, and its affiliated agencies, such as the hail dept., bonding fund, fire and tornado fund on vouchers presented for payment from and after the death of O.E. Erickson, insurance commissioner, and if so, whom?"

The general law is that even though the incumbent of a constitutional office is removed or dies, or for some reason becomes disqualified, the office is not thereby suspended even though a successor is not immediately appointed, but continues unbroken so long as the constitution exists. The office continues and the necessary duties of the office must be discharged by someone. Barrett v. Duff (Kans.) 217 Pac. 918; Anno. Cases 89 ALR 137.

While the deputy appointed by Mr. Erickson is probably no longer a legally qualified deputy, nevertheless since no successor has as yet been appointed and qualified, the deputy appointed by Mr. Erickson may, under the supervision of the governor, discharge such duties as are necessary to the proper functioning of the office--such as the issuance of vouchers presented for payment of claims in connection with the hail department, bonding fund, fire & tornado fund, and other necessary functions of the office.

Section 75 of the state constitution provides, among other things, that the governor shall take care that the laws of the state are faithfully executed, and since there can be no suspension of the constitutional authority vested in him, has the undoubted right to see that the office of commissioner of insurance will function properly under the law, notwithstanding the fact that a short space of time may lapse between the death of the incumbent and the appointment of a successor.

It is the opinion of this office, therefore, that the state auditing board, of which the governor is a member, has the legal authority to approve and allow claims for salaries and other items, approved by Mr. Erickson's former deputy, against the several departments under the supervision of the insurance commissioner, if such claims are proper charges and could be approved by a legally appointed and acting commissioner of insurance.

NELS G. JOHNSON

Attorney General