

MARCH 31, 1949.

HONORABLE LLOYD B. MARSH,
Secretary of State,
State House,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 18.

DEAR MR. MARSH:

I have your letter of the 28th ult., requesting an opinion as to whether William Dewey was legally holding the office of Jury Commissioner in and for the County of Passaic.

Your letter discloses that Mr. Dewey was Sheriff of Passaic County when he was appointed a jury commissioner and that his term of office as Sheriff of Passaic County terminated on November 10, 1948. He also held the office of jury commissioner which expires on June 30, 1948.

R. S. 2:87-1 provides as follows:

"In each county of the State there shall be appointed by the Governor, by and with the advice and consent of the Senate, two citizens, resident therein who shall not be members of the same political party, who shall constitute and be designated as 'commissioners of juries,' hereinafter designated jury commissioners, of the county. No person holding any other public office other than that of sheriff and no person licensed to practice law in this State shall be appointed as a commissioner of juries. The certificate of appointment of each person appointed as a jury commissioner, together with the oath which he is required to take and subscribe by section 2:87-3 of this Title, shall be filed in the office of the clerk of the county in and for which he is appointed."

This section provides for the appointment of two jury commissioners by the Governor with the advice and consent of the Senate, and it further provides that they shall not be members of the same political party.

It further provides that no person holding any public office other than that of Sheriff, and no person licensed to practice law in this State shall be appointed as a commissioner of juries.

R. S. 2:87-2 provides for the term of commissioners and reads as follows:

"Each jury commissioner appointed pursuant to section 2:87-1 of this Title shall hold office for one year."

R. S. 2:87-5 provides as follows:

"The office of a jury commissioner appointed pursuant to section 2:87-1 of this Title shall become vacant, immediately upon his assuming the duties of any other public office, or if he holds the office of sheriff, immediately upon the expiration of his term of office as sheriff." (Italics ours.)

From a reading of this section it is very clear that where a sheriff of the county also holds the office of jury commissioner, then immediately upon the expiration of his term of office as sheriff his office as jury commissioner becomes vacant.

Therefore, it is apparent that Sheriff Dewey's office as a jury commissioner became vacant on November 10, 1948, when his term as sheriff in and for the County of Passaic had terminated.

Answering your specific question posed in paragraph two of your letter as to whether or not Mr. Dewey should be appointed for an unexpired term, it is the opinion of this office that Sheriff Dewey should receive an appointment for an unexpired term as jury commissioner in and for the County of Passaic as provided for by R. S. 2:87-6 which reads as follows:

"If the office of a jury commissioner appointed pursuant to section 2:87-1 of this Title becomes vacant by reason of his removal pursuant to section 2:87-4 of this Title, or his death, resignation or removal from the county, or his disqualification by assuming the duties of another public office, or for any other reason, the Governor shall appoint his successor for the balance of the term. A certificate of the appointment to fill a vacancy shall be filed in the office of the clerk of the county in which the vacancy existed."

Respectfully submitted,

THEODORE D. PARSONS,
Attorney General,

By: BENJAMIN M. TAUB,
Deputy Attorney General.

bmt;d

MARCH 29, 1949.

HONORABLE SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 19.

MY DEAR COMMISSIONER:

You indicated that there is some misunderstanding regarding the power of a sentencing court to open and vacate the sentence of a prisoner committed to and confined in the penal and correctional institutions under the jurisdiction of your department.

You desire to be advised concerning the procedure to be followed when your institutions receive an order of the court remanding the prisoner for resentence.

The Supreme Court has established a procedure governing the courts under its jurisdiction relative to correction of sentences and imposition of new sentences under Rule 2:7-13 of the Rules, which reads as follows:

"The court may correct an illegal sentence at any time. The court may reduce or change a sentence within 60 days from the date of the judgment of conviction."