

CHAPTER 2

ORIGIN - DEFINITION - NATURE OF OFFICE - VACANCIES

The term "clerk" is derived from the Latin word "clericus" (clergyman). Its application to a particular officer of a court has its origin in the historical fact that in the early days of England, both before and after the Norman conquest, the subordinate officers of courts of justice as well as the judges, were chosen among the clergy. Almost all forms of learning were confined to this class. In England "the clerk of the peace," a county officer appointed by the *custos rotulorum* (keeper of the rolls) of the county, was clerk of the court of general sessions of the peace. The clerks of the courts known as county courts, which were presided over by the sheriffs, were appointed by the sheriffs and were sometimes known as county clerks. In the colonies the establishment of courts of justice with appointment of judges and subordinate officers were a prerogative of the crown. These courts of common pleas were known as county courts, and the clerks thereof acquired the name of county clerk. (10 American Jurisprudence)

In the various states of this country the creation of the office of the clerk of the court is a matter of constitutional or statutory provision. In Indiana the State Constitution creates the office of "clerk of the circuit court" as the official name of the officer who keeps the records of courts of the counties. The term "county clerk" and "clerk of the circuit court" are often used interchangeably but the designation of such official as "county clerk" is incorrect. 168 Ind. 294; 80 N.E., 849; 36 N.E., 933; 9 App., 657.

The courts uniformly hold that the clerk of the circuit court is a ministerial officer who has charge of the clerical part of its business. The clerk is custodian of its record and seal, issues process, accepts filings of commencement of actions in litigation, enters judgments and orders of the court, receives money, makes certified copies of record, issues many miscellaneous licenses and licenses to practice various professions, and must keep a record of all wills and matters of trust in probate proceedings. In general the clerk is required to perform all official duties imposed by statute or by lawful authority of the court.

The powers conferred upon the clerks of courts are to be exercised in accordance with the statute conferring them. While the clerk is an officer of the court, the clerk is not "the court." The clerk has no judicial authority. The clerk's official duty is prescribed by law and the actions in performance of that duty are ministerial. *Steve v. Colosimo* (1937) 211 Ind. 673. O.A.G. 1951, No. 104, Page 312. *Stine v. Shuttle, et al*, 134 Ind. App. 67 (1963).

In the case of *Marion County Election Board v. O'Brien*, 241 Ind. 36, 169 N.E. 2d 287, the Supreme Court of Indiana said:

"The Clerk of the circuit court is neither a judge, a State Officer, nor is he elected by the Legislature."

VACANCY IN OFFICE

A vacancy in the office of the clerk of the circuit court that was last held by a person elected or selected as a candidate of a major political party of the state shall be filled by a caucus under IC 3-13-11.

A vacancy that occurs in the office of clerk of the circuit court: (1) other than by resignation, and (2) that is not covered by the above paragraph, shall be certified to the governor by the judge of the circuit court and shall be filled by the governor. The person who is appointed holds office for the remainder of the unexpired term and until a successor is elected and qualified. [IC 3-13-6-3]