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STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

May 16, 1974

Opinion No. 74- 149

Nick A. Tomasic  
District Attorney  
Twenty-Ninth Judicial District  
Wyandotte County Court House  
Kansas City, Kansas 66101

Dear Mr. Tomasic:

K.S.A. 1973 Supp. 38-804c states in pertinent part thus:

"In every county having a population of not less than one hundred eighty-five thousand (185,000) and not more than three hundred thousand (300,000) the judge of the juvenile court shall be elected for a term of four (4) years, commencing with the general election in 1972, and shall take his office on the second Monday in January in the year following his election and shall serve until his successor is elected and qualified."

You advise that the individual elected judge of the Juvenile Court in 1972 has since deceased. In January, 1973, her successor was appointed, according to a communication by the Governor to the Secretary of State dated January 8, 1973, pursuant to "K.S.A. 28-804c, 25-312, to fill the unexpired term . . . ."

You inquire whether, when the name of the person thus appointed to fill the vacancy appears on the ballot for the November, 1974, general election, the name should be designated for election to fill the remainder of the unexpired term, or for election to a full term of four years.

K.S.A. 38-804c makes no provision for filling vacancies in the position. K.S.A. 25-312 states thus in pertinent part:

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"All vacancies in any state or county office, unless otherwise provided for by law, shall be filled by appointment by the governor, until the next general election after such vacancy occurs, when such vacancy shall be filled by election . . ."

The term of service of persons filling vacancies is prescribed by K.S.A. 25-314 thus:

"Any of said officers that may be elected or appointed to fill vacancies may qualify and enter upon the duties of their office immediately thereafter, and when elected they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified; but if appointed, unless otherwise provided by law, they shall hold the same only until their successors are elected and qualified."

Under K.S.A. 25-312, the person appointed by the Governor in January, 1973, may serve pursuant to that appointment only until the next general election. Under K.S.A. 25-314, the person elected at the November, 1974, general election to fill the vacancy may "hold the same during the unexpired term for which" he or she is then elected. That unexpired term would extend until the end of the term of four years which commenced on the second Monday in January, 1973. The person elected to fill the vacancy at the November, 1974, general election would be elected, thus, not for a full term of four years, but for the unexpired portion of the term commencing in 1973. As you point out, Hamilton v. Raub, 131 Kan. 392, 292 Pac. 396 (1930), confirms this conclusion.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm