



STATE OF KANSAS

*Office of the Attorney General*

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VERN MILLER  
Attorney General

January 6, 1975

Opinion No. 75- 2

Mrs. Marge Miller  
Golden Plains Unified School District 316  
Rexford, Kansas 67753

Dear Mrs. Miller:

Mr. Kester has forwarded to us your letter to him of December 17, raising the question whether position number 4 on the board of education of Unified School District 316 must be filled by election at the April, 1974, general school elections. According to the board history you enclose, the individual elected to take that seat effective July 1, 1973, declined to do so. Lile Lunsway was appointed by the Board on August 13, 1973, to fill the resulting vacancy.

K.S.A. 25-2022 states thus:

"Any board shall have power to fill by appointment any vacancy which occurs thereon, and such appointee shall publish a notice one time. . . stating that the vacancy has occurred and that it will be filled by appointment. . . If such vacancy occurs before January 1 of an odd-numbered year leaving an unexpired term of more than two years such appointee shall serve until the July 1 after the following general school election as provided in K.S.A. 1972 Supp. 25-2023 or any amendments thereto.

In the latter event, the unexpired term of two years commencing July 1 after the following general school election shall be filled at such election and the ballots or ballot labels and returns of election with respect to such office be designated as follows:  
'To fill the unexpired term.'

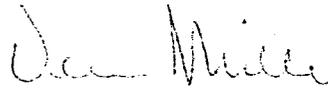
An election, thus, is required to fill any vacancy which occurs before January 1 of an odd-numbered year leaving an unexpired term of more than two years. Some have taken a restrictive view of this language, requiring an election to fill only those vacancies leaving an unexpired term of more than two

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years and which occur in the even-numbered year before  
January 1 of an odd-numbered year.

In our view, there is no basis in either the language or intent of the statute which warrants such a restrictive construction. K.S.A. 25-2022 permits the voters to fill by election any vacancy which at the time of the election has an unexpired term of two years and which has occurred prior to January 1 of the odd-numbered year in which the election is to be held, in order that it may be certified to the county clerk as required by K.S.A. 25-2017a. Whether the vacancy occurs in the first or the second year of a four-year term, so long as it occurs prior to January 1 of the election year, and there are more than two years of the unexpired term remaining, the voters of the district are entitled to fill that vacancy.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:tp  
cc: Mr. David Kester  
Kansas State Board of Education