



STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

September 12, 1975

ATTORNEY GENERAL OPINION NO. 75- 358

Mr. Clifford L. Bertholf
Assistant District Attorney
Sedgwick County Courthouse
535 North Main
Wichita, Kansas 67203

Re: Elections--Vacancies--Conventions

Synopsis: The direction of K.S.A. 25-3801 that the county chairman shall promptly fill vacancies in the offices of precinct committeeman or committeewoman is directory and not mandatory, and delay in making such appointments does not deny persons so appointed the legal title to the offices of precinct committeeman and committeewoman involved. The district convention held pursuant to K.S.A. 25-3902 may be held within or without the legal boundaries of the legislative district in which the vacancy is to be filled.

* * *

Dear Mr. Bertholf:

You inquire concerning the eligibility of recently appointed committeemen and committeewomen to vote at a district convention conducted pursuant to K.S.A. 25-3902 to select a person to fill a vacancy in a state legislative seat. You ask that I assume that the appointments in question were made only recently pursuant to K.S.A. 25-3801 to fill vacancies which were not filled at the 1974 primary, and indeed, were not made until after announcement of the resignation of the legislature which resulted in the vacancy.

K.S.A. 25-3801 states thus in pertinent part:

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"Vacancies occurring in the office of precinct committeeman or committeewoman shall be promptly filled by appointment by the county chairman, except that any vacancy which occurs because the party had no candidate at such primary election shall not be filled until the county central committee has elected or reelected its chairman under section 2 of this act."

You ask that I assume that the county chairman has been duly elected or reelected. In *City of Hutchinson v. Ryan*, 154 Kan. 751, 121 P.2d 179 (1942), the court stated the applicable principles thus, quoting from 59 Corpus Juris 1078:

"'A statute specifying a time within which a public officer is to perform an official act regarding the rights and duties of others, and prompt conduct of business is usually directory, unless the phraseology of the statute, or the nature of the act to be performed and the consequences of doing or failing to do it at such time, is such that the designation of time must be considered a limitation on the power of the officer. So a statute requiring a public body, merely for the orderly transaction of business, to fix the time for the performance of certain acts which may as effectually be done at any time is usually regarded as directory'"
154 Kan. at 757.

Clearly, the direction that the chairman shall "promptly" make such appointments to fill vacancies is directory under the foregoing criteria. Upon what theory it may be suggested that the requirement that the chairman act promptly may be regarded as imposing a forfeiture of that legal appointive power as a result of his dilatory neglect is not apparent. It would surely be an extraordinary result that the vacancies were legally impossible to fill merely because the appointments were not made at some time immediately upon their occurrence.

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It is my opinion that the persons appointed by the county chairman to fill vacancies as aforesaid were appointed by the person designated by statute having the power to make such appointments, and are duly authorized to vote in any convention held pursuant to K.S.A. 25-3902.

Secondly, you inquire whether it is legal for the district convention to meet pursuant to K.S.A. 25-3902 outside the district for which the replacement must be made. There is no statutory requirement that the convention be held in the district itself, I know of no applicable principle of law upon which to conclude that the convention, duly called and attended by persons legally authorized to participate therein, must be held within the territorial boundaries of the district itself. Obviously, if the convention were called to be held in a far distant place across the state, resulting in the reasonably foreseeable inability of many of the precinct committeewomen and committeemen to attend the convention, judicial relief might well be available upon proper application, grounded upon an intentional effort to subvert the convention process, rather than on any technical territorial jurisdiction requirement in no way provided by statute.

Nothing suggests that such is the case here. The law requires only that the convention be held, and I conclude that there is no territorial restriction upon the place of convention to the legal boundaries of the legislative district whose legislative vacancy is to be filled.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj