



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

October 29, 1975

ATTORNEY GENERAL OPINION NO. 75-412

Mr. William J. Ryan
City Attorney
301 East Washington Street
Norton, Kansas 67654

Re: Cities--Officers--Municipal Judge

Synopsis: A person who is lawfully appointed municipal judge pursuant to K.S.A. 14-201, and who is a resident of a city of the second class at the time of initial appointment, and who thereafter moves from the city to another community within the county and who remains eligible for the office of municipal judge, does not become disqualified from holding that office by virtue of removal from the city, and reappointment by the city governing body is not necessary to be made of that individual to permit him or her to continue in that office after removal from the city.

* * *

Dear Mr. Ryan:

You advise that the City of Norton has a municipal judge who was appointed early in 1975 pursuant to K.S.A. 14-201. Since that time, the individual so appointed has moved from the City of Norton and now resides in another community in the county, commuting to Norton regularly two evenings a week to hold court on a regular basis.

K.S.A. 14-205 provides in pertinent part thus:

"All officers elected or appointed shall be qualified electors of said city, except

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that the city may appoint nonresidents as . . . municipal judge . . . when deemed necessary The removal from such city of any officer required to be a qualified elector shall occasion a vacancy in such office."

The question arises whether a vacancy resulted when the municipal judge moved from the city to another community within the county. You advise that the city governing body wishes to continue the services of this individual and proposes to reappoint this person if necessary.

Under the cited statute, the removal from the city of any "officer required to be a qualified elector" shall cause a vacancy in that officer. The municipal judge is not required to be a resident of the city, and may be a nonresident when the appointment of such person is deemed necessary by the city governing body. Because the municipal judge is not required to be a resident of the city as a qualification for initial appointment, on the face of the quoted sentence, the office was not vacated by the individual's removal from the city.

It may be argued, of course, that in order to appoint a nonresident of the city as municipal judge, that the appointing authority must make a finding of the necessity for the appointment of such person as a condition precedent or prerequisite to the appointment. However, in my judgment, such a finding is necessary. Under K.S.A. 14-205, residence within the city is a qualification for appointment for certain offices, and it is not a qualification for certain other offices, including that of municipal judge if the governing body wishes to appoint some person from without the city. The individual in question did not become disqualified for appointment to the office by his or her removal from the city and unless removal from the city results in a disqualification for appointment, there occurs no vacancy in the office, in my judgment.

Accordingly, it is my opinion that no reappointment is necessary of an individual who was lawfully appointed municipal judge in the first instance, and who has not since become disqualified to hold the office by virtue of his removal from the city to a community within the county.

Yours very truly,



CURT T. SCHNEIDER
Attorney General