



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

January 12, 1976

ATTORNEY GENERAL OPINION NO. 76- 7

Mr. Tim W. Ryan
Clay County Attorney
509 Court Street
Clay Center, Kansas 67432

Re: Counties--Offices--Commissioner

Synopsis: Removal by a county commissioner from one commissioner district of the county to another commissioner district of the same county during the term of office does not result in a vacancy in said office.

* * *

Dear Mr. Ryan:

I have your letter of January 6, 1976, inquiring whether the removal of a county commissioner from the district in which he resided at the time of his election to another commissioner district of the county during his term results in a vacancy of that office.

Three Attorneys General have considered this question, and each has concluded that such removal does not result in a vacancy. I enclose copies of those opinions, by Attorneys General Harold Fatzer, John Anderson, Jr., and Robert Londerholm. I have reviewed these opinions, and agree that removal of a commissioner from one commissioner district in the county to another commissioner district does not result in a vacancy.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj



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February 25, 1966

Hon. Paul R. Shanahan
Secretary of State
State House
Topeka, Kansas

Re: Counties - Officers - Commissioners

Dear Mr. Shanahan:

You have inquired whether the office of county commissioner becomes vacant when a commissioner moves from the district for which he was elected to another district within the county. In our opinion, it does not. K.S.A. 19-2608 provides that a county office shall become vacant upon the incumbence "ceasing to be an inhabitant of the county for which he was elected or appointed." In the case you pose, the commissioner remains an inhabitant of the county for which he was elected. In Brungardt v. Leiker, 42 Kan. 206, our Court held that the office of commissioner did not become vacant where a commissioner's residence was excluded from his old district as a result of redistricting under the predecessor of K.S.A. 19-204. In such a case, he was entitled to finish the term for which he was elected. In our opinion, the same rule should prevail where the commissioner moves from one district to another within the county.

Very truly yours,

ROBERT C. LONDERHOLM
Attorney General

JRF/nka



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March 3, 1972

Harold L. Haun
Morris County Attorney
Savings & Loan Building
Council Grove, Kansas 66846

Dear Mr. Haun:

You state that shortly after organization of the Board of County Commissioners of Morris County, the board redrew the commissioner districts, as required by K.S.A. 10-204. As a result of the redefined boundaries, the commissioner elected from former District No. 1 became a resident of new District No. 2. We are advised that, in fact, he lives merely across on the opposite side of the road defining the boundary between the new districts numbered one and two.

Article 4, § 2 of the Kansas Constitution provides thus:

"General elections and township elections shall be held biennially on the Tuesday succeeding the first Monday in November in the years bearing even numbers. All county and township officers shall hold their offices for a term of two years and until their successors are qualified: Provided, One county commissioner shall be elected from each of three districts, numbered 1, 2, and 3, by the voters of the district, and the legislature shall fix the time of election and the term of office of such commissioners. . . ."

You advise that the commissioner in question has two years remaining of the term to which he was elected.

You inquire whether the commissioner elected from former District No. 1 may continue to represent that district, although he now resides in District No. 2, as redefined. In Brundardt v. Leiker, 42 Kan. 206 (1889), commissioner districts were redrawn so as to place the residence of one commissioner in another than that from which he was elected. Following redrawing of the districts, a commissioner was elected from the third district, that from

Mr. Harold L. Haun
March 3, 1972
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which, by redefinition of the boundaries, the incumbent, whose term had not yet expired, had been removed. Plaintiff, the newly elected commissioner, contended that the position of the incumbent had been vacated by the redrawing of the districts. The court disagreed:

"If the construction contended for. . . the plaintiff should prevail, it would give any two commissioners power to dispose of a third one who was not acting on any public question as they might desire, and thus subvert the principle upon which the constitutional provision dividing counties into districts rests. The reason . . . was to give all parts of the county a fair representation in local affairs, and an equal voice in the location and distribution of local favors; and if it is within the power of two members to vacate the office of a third, by a change in the boundaries of his district, before the expiration of the three-years term, then the constitutional provision is practically nullified."

It is clear that the office of the commissioner elected from former District No. 1 was not vacated by redefinition of commissioner districts. Moreover, in our opinion, he continues to represent the district from which he was elected for the duration of his present term, and he continues to do so notwithstanding prior to the expiration of that term a commissioner may be elected from new District No. 2 to represent that district. The commissioner in question is not required to seek re-election prior to that time to represent the district in which he now lives as a result of redrawing of districts.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:sbs



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June 16, 1953

Mr. William H. Stowell
County Attorney
Phillipsburg, Kansas

Dear Bill:

This is to acknowledge your letter of June 6, 1953. You there wish to know whether or not a county commissioner of your county who removed from the district from which he was elected and took up residence in another district within your county, thereby vacates his position as county commissioner.

It is the opinion of this office that vacancies in county offices, including the office of county commissioner, are, in the absence of specific statutory provisions relating to a particular office, governed by G. S. 1949, 19-2608. That statute provides generally when a county office shall become vacant, and in the 4th subsection thereof a vacancy is declared to exist upon "his ceasing to be a resident of the county for which he was elected or appointed".

G. S. 1949, 19-202 provides for the qualifications necessary to be elected to the office of county commissioner. G. S. 1949, 19-203 provides for the filling of his vacancy. There appear to be no provisions in Chapter 19, Art. 2, specifically declaring the means through which a vacancy is created in the office of county commissioner. It therefore appears that the provisions of 19-2608, supra, are controlling.

-2608, 202, 203 ✓

Mr. Wm. H. Stowell--2
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It is, therefore, the conclusion of this office that the removed county commissioner, so long as he remains within the county, may continue to hold his office for the remainder of the term for which he was elected.

Very truly yours,

HAROLD R. FATZER
Attorney General

REH:mh



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June 1, 1956

Mr. E. F. Russell
County Attorney
Ulysses, Kansas

Dear Ned:

Reference is made to your letter of May 29, 1956, relative to the status of your Board of County Commissioners in Grant County. We are inclined to believe that the conclusions expressed by you with respect to each of the commissioners is correct. We agree that the removal of Commissioner Kephart from the district in which he was elected to another district within the county does not vacate the office. At the same time, it seems obvious that the removal of Commissioner Haley from the county effectively creates a vacancy in that office.

G. S. 1949, 19-2608 provides in part:

"Every county office shall become vacant on the happening of either of the following events, before expiration of the term of such office: . . . fourth, his ceasing to be an inhabitant of the county for which he was elected or appointed; . . ."

While as you point out, there may be a question as to whether the provision quoted above is self-executing, at the same time there can be no question that the Legislature intended that a county officer should not continue to hold an official position if he had ceased to be a resident of the county. Therefore, it is our thought that the county clerk together with Commissioner Kephart should forthwith fill the vacancy created by the death of Commissioner Mickey, the appointee to serve until the next general election.

Thereupon the Board should proceed either to accept the resignation of Commissioner Haley or in case no resignation

19-2608

Mr. E. F. Russell

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is submitted to declare his office vacant. After the vacancy has been established as a matter of record, then the remaining commissioners and the county clerk should proceed to appoint someone to fill that vacancy until the next general election.

I hope these comments will be of assistance to you.

Very truly yours,

JOHN ANDERSON, JR.
Attorney General

PEW:mb