



STATE OF KANSAS

## Office of the Attorney General

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**Curt T. Schneider**  
Attorney General

December 5, 1977

ATTORNEY GENERAL OPINION NO. 77- 378

Mr. Craig D. Kershner  
Lane County Attorney  
Post Office Box 967  
Dighton, Kansas 67839

Re: Courts--Judges--Vacancies

Synopsis: A vacancy in the position of district magistrate judge in a judicial district which has not adopted the non-partisan plan for the selection of judges is filled by appointment by the governor, within sixty days of occurrence of the vacancy, and the person so appointed serves only until the next general election which is held more than thirty days after occurrence of the vacancy, at which election a person shall be elected to serve the unexpired term.

\* \* \*

Dear Mr. Kershner:

You inquire concerning the term of office of a person who is appointed to fill a vacancy in the position of district magistrate judge in Lane County, Kansas.

You advise that the district magistrate judge of Lane County, the Honorable Dayton Schmalzried, has submitted his resignation from that position effective January 1, 1978, having commenced a four-year term in January, 1977. The resignation was submitted to District Judge C. Phillip Aldrich, who in turn forwarded the resignation to the governor.

K.S.A. 1976 Supp. 20-340(b) provides in pertinent part thus:

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"[F]rom and after January 10, 1977, in judicial districts which have not approved the nonpartisan method of selecting district court judges . . . any vacancy in either such position [associate district judge or district magistrate judge] caused by any reason other than the expiration of a judge's term shall be filled as provided in K.S.A. 1976 Supp. 25-312a."

K.S.A. 1976 Supp. 25-312a states thus:

"Except as otherwise provided in K.S.A. 20-2903 to 20-2913 and amendments thereto, whenever a vacancy shall occur in the office of judge of the district court, it shall be filled by appointment by the governor until the next general election that shall occur more than thirty (30) days after such vacancy, when such vacancy shall be filled by election. Any appointment made by the governor as required by this section shall be made within sixty (60) days after the vacancy occurs."

K.S.A. 20-2903 through -2913 apply to judicial districts in which the nonpartisan selection plan has been chosen.

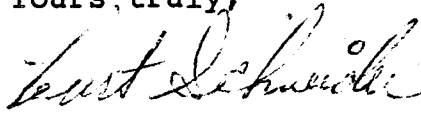
Thus, I agree entirely with you, that under the statutes cited above, it is clear that whenever a vacancy occurs by reason other than the expiration of a judge's term in a judicial district in which the nonpartisan plan for the selection of judges has not been adopted, that a vacancy occurring in the position of district magistrate judge by reason of the resignation of the incumbent is to be filled by appointment by the governor, within sixty days after occurrence of the vacancy. The term of the person so appointed extends only until the date of the next general election which is held more than thirty days after occurrence of the vacancy. At that election, the person elected will serve the unexpired term of the person last elected to the position, in this instance Judge Schmalzried.

You indicate that the view has been expressed in some quarters that the person appointed by the governor to fill the vacancy resulting from the resignation of Judge Schmalzried is appointed

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to serve the duration of the term of Judge Schmalzried. I can find no authority whatever to support that suggestion. The phrase "judge of the district court" as found in K.S.A. 1976 Supp. 25-312a includes district magistrate judges, see ch. 147, § 10, L. 1976, and that section, under which the vacancy is filled by appointment of the governor, fixes the term of the person so appointed, limiting that term until the date of the next general election which is held more than thirty days after occurrence of the vacancy.

Yours, truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj