



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 30, 1978

ATTORNEY GENERAL OPINION NO. 78- 41

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

Re: Cities--Governing Body--Vacancy

Synopsis: The 1968 amendment of K.S.A. 14-204 and -205 operated to repeal an ordinance of the City of Norton providing for the filling of vacancies on the city council by special election. Thus, unless and until an appropriate charter ordinance is enacted by the city governing body, any vacancy occurring on the city council should be filled by appointment by the remaining members thereof.

* * *

Dear Mr. Ryan:

An ordinance of the City of Norton, paragraph 1-402, provides that a vacancy in the governing body shall be filled at a special election to be called for that purpose. This ordinance, you indicate, was enacted a number of years ago, at least prior to 1957.

K.S.A. 14-204 provides that whenever a vacancy shall occur in the office of councilman, the governing body shall appoint an elector of the ward where the vacancy occurred to be councilman for the balance of the unexpired term.

The ordinance and K.S.A. 14-204 thus conflict, and you inquire which should be deemed controlling. At the time the ordinance was enacted, in the 1950's, it conformed to the applicable statute then in effect, G.S. 1949 14-205, which provided that "[v]acancies

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in the offices of the governing body shall be filled for the unexpired term at a special election to be called and held for that purpose, as may be provided by ordinance." In 1968, this language was repealed, see ch. 274, § 34, L. 1968, and the present language added to K.S.A. 14-204. The ordinance was enacted prior to 1961, and the adoption of Article 12, § 5 of the Kansas Constitution, providing for home rule. The ordinance is thus an ordinary ordinance, and was repealed, in my judgment, by the 1968 enactment repealing the provision for special elections in K.S.A. 14-205, and providing for the filling of vacancies by appointment by the remaining members of the governing body by amending K.S.A. 14-204.

Accordingly, in my opinion, any existing vacancy should be filled by appointment by the remaining members of the governing body.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj