



STATE OF KANSAS

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ATTORNEY GENERAL

November 3, 1978

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ATTORNEY GENERAL OPINION NO. 78-356

Mr. Gordon K. Lowry
Lowry and Johnson
Post Office Box 82
Valley Falls, Kansas 66088

Re: Cities--Mayor--Vacancy

Synopsis: In a city of the third class which has exempted itself by charter ordinance from K.S.A. 15-201, and which has made no other provision for filling the office of mayor in the event of a vacancy therein, the president of the council would assume the rights, duties and privileges of that office until the expiration of the term of the mayor whose death, resignation or removal resulted in the vacancy, in the first instance, and a successor was elected and qualified at the regular city election held for filling that office.

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Dear Mr. Lowry:

You enclose a photocopy of Charter Ordinance No. 1 of the City of Valley Falls, exempting the city from K.S.A. 15-201, a portion of which provides that in case of a vacancy in the office of mayor, the president of the council shall become mayor until the next regular city election.

You inquire whether, if the mayor were to resign or that office to become vacant otherwise, the president of the council would serve the balance of the four-year term or only until the next regular city election.

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As you point out, the city did not exempt itself from K.S.A. 12-311, which provides that whenever a vacancy shall occur in the office of mayor,

"the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, until such vacancy be filled, or such disability be removed, or in case of temporary absence, until the mayor shall return."

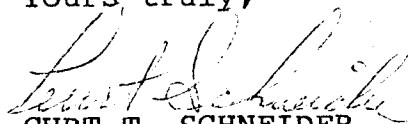
Unlike K.S.A. 15-201, which provides that in the event of a vacancy in the office of mayor, the president of the council "shall become mayor until the next regular election for that office, K.S.A. 15-311 provides only that in the event of a vacancy in the office of mayor, the president of the council shall "for the time being . . . exercise the office of mayor . . . until such vacancy be filled, or such disability be removed or, in case of temporary absence, until the mayor shall return." Under the latter statute, the president of the council does not succeed to the office of mayor, but merely exercises the powers thereof.

As a result of the city's action to exempt itself from K.S.A. 15-201 and the provision for filling a vacancy in the office of mayor therein, there is now no provision for filling that vacancy. In the event of such a vacancy, the president of the council would exercise all of the powers, rights and privileges of the mayor, and would continue to do so until the vacancy was filled by election. The question then arises whether the president of the council would continue to so act until the vacancy was filled at the next regular city election, or at the next regular city election for that office, *i.e.*, at the expiration of the four year term of the mayor. The statute is silent on this point. Absent express provision, either by statute or by city charter ordinance, providing for the filling of a vacancy in the office of mayor prior to the expiration of the full term, it is my judgment that the president of the council would continue to exercise the rights, duties, and privileges of the mayor until the expiration of the term of the mayor whose death, resignation or removal caused the vacancy to occur, and a successor was elected at the regular city election called and held to elect a successor to such mayor.

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It would be appropriate for the city to enact a second charter ordinance providing otherwise, if it deems it appropriate to do so.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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