



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 23, 1980

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 80-265

Mr. Clyde A. Townsend
Wyandotte County Commissioner, Second District
Wyandotte County Courthouse
Kansas City, Kansas 66101

Re: Counties and County Officers--County Treasurer--
Appointment to Fill Vacancy in Office

Synopsis: If a vacancy occurs in the office of county treasurer, K.S.A. 19-504 provides for the filling of that vacancy in the manner prescribed for filling vacancies in the office of member of the house of representatives (K.S.A. 1979 Supp. 25-3901 et seq.). The person so appointed shall hold office for the remainder of the unexpired term and until a successor is elected and qualified, as provided by 19-504.

It is of no consequence that the person vacating the office of county treasurer had been appointed to fill a previous vacancy in the office and that a successor in office, whose term commences at the end of the appointee's term, has since been elected. The vacancy created by the appointee shall be filled in the manner provided by K.S.A. 19-504. There is no authority enabling the elected successor to automatically assume the office to fill the vacancy described. Cited herein: K.S.A. 19-504, K.S.A. 1979 Supp. 25-312, K.S.A. 25-314, K.S.A. 1979 Supp. 25-3901, 25-3902, 25-3902a, 25-3903, 25-3904, L. 1963, ch. 160, §2.

* * *

Mr. Clyde A. Townsend
Page Two
December 23, 1980

Dear Mr. Townsend:

You have asked for our opinion concerning the filling of a vacancy in the office of county treasurer in the following factual context. You advise that presently "Person A" serves as county treasurer, having been duly appointed by the governor in February, 1979 to serve the remainder of a term ending in October, 1981. "A" did not file for nomination or election to the office of county treasurer in the 1980 primary or general elections, but "Person B" was elected, whose regular term commences in October, 1981. You have asked three questions: If "A" vacates the office of county treasurer prior to the expiration of the term to which he was appointed, (1) must a district convention election, as prescribed by K.S.A. 1979 Supp. 25-3901 et seq., be conducted to fill the vacancy; or (2) could "B" elect to automatically take office; or (3) since "A" was not elected, is it possible, by operation of Kansas statutes (specifically, K.S.A. 19-504, K.S.A. 1979 Supp. 25-312, K.S.A. 25-314, and K.S.A. 1979 Supp. 25-3901 through 25-3904), that "B" is now the county treasurer, by virtue of his election in November, 1980?

You have correctly noted that K.S.A. 19-504 provides for the filling of a vacancy in the office of county treasurer, as follows, in pertinent part:

"In case the office of county treasurer shall become vacant, there shall be appointed a qualified elector of the county to perform the duties of such treasurer, and the person so appointed . . . shall be invested with all the duties of such treasurer for the remainder of the unexpired term and until a successor shall be elected and qualifies. Appointments hereunder shall be made in the manner provided by law for filling vacancies in the office of member of the house representatives."

You have also cited K.S.A. 1979 Supp. 25-312 and K.S.A. 25-314 for our consideration of your questions. Section 25-312 is not applicable in the situation you have described, in our judgment. That section applies to the filling of vacancies in elective state or county offices by the governor "unless otherwise provided by law." The law provides a method for the filling of a vacancy in the office of county treasurer, namely K.S.A. 19-504, quoted above. Thus, K.S.A. 1979 Supp. 25-312 is not applicable, by its express terms, to the vacancy about which you inquire.

Mr. Clyde A. Townsend
Page Three
December 23, 1980

K.S.A. 25-314 is a general provision which prescribes the term of office of persons filling vacancies. That section provides:

"Any of said officers [state, district, county and township officers (see K.S.A. 25-313)] that may be elected or appointed to fill vacancies may qualify and enter upon the duties of their office immediately thereafter, and when elected they may hold the same during the unexpired term for which they were elected and until their successors are elected and qualified; but if appointed, unless otherwise provided by law, they shall hold the same only until their successors are elected and qualified." (Emphasis added.)

We assume that your third question is predicated upon the language we have emphasized. You appear to suggest that since "A" was appointed to fill the vacancy in the office of county treasurer, then K.S.A. 25-314 directs that "A" shall serve only until his successor, "B," is elected and qualified for the office. If that is your suggestion, it is our opinion that your reliance on section 25-314 in this instance is unfounded. Truly, the statute provides that a person appointed to fill a vacancy shall only hold the office until the successor is elected and qualified, but that is only the case "unless otherwise provided by law." (Emphasis added.) The law provides otherwise, in section 19-504, quoted above. That section, as we have already noted, directs that the person appointed to fill a vacancy in the office of county treasurer shall hold that office "for the remainder of the unexpired term and until a successor is elected and qualifies." (Emphasis added.) Thus, section 25-314 is not applicable.

Accordingly, notwithstanding "B's" election in November, 1980, "A" holds office for the balance of the term for which he was appointed, until October, 1981, at which time "B" commences his regular term. If "A" vacates the office before October, 1981, "B" does not automatically assume the office. The vacancy created by "A's" leaving is to be filled as prescribed by K.S.A. 19-504, described above, and the person appointed thereby shall hold office for the remainder of the unexpired term, i.e., until October, 1981, when "B" takes office.

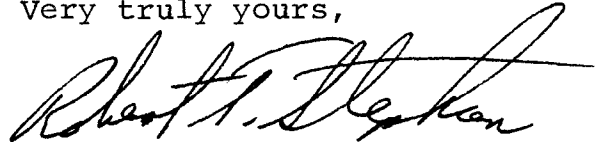
In the course of our research of this question, we have been referred to the case of State, ex rel. v. Lutz, 116 Kan. 621 (1924), which case may have induced your reliance upon K.S.A. 25-314, since the Kansas Supreme Court found that section to be applicable to the filling of a vacancy in the office of county treasurer. However, we note that since

Mr. Clyde A. Townsend
Page Four
December 23, 1980

that case was decided, K.S.A. 19-504 has been amended. In 1963 the legislature directed that the person appointed to fill a vacancy shall serve "for the remainder of the unexpired term and until a successor shall be elected and qualifies." Cf. R.S. 1923, §19-504 with L. 1963, ch. 160, §2. Because of the significant change in this section, it is our opinion that the decision in State, ex rel. v. Lutz, supra, and K.S.A. 25-314 are no longer relevant to questions pertaining to vacancies in the office of county treasurer.

Thus, in summary, if a vacancy occurs in the office of county treasurer, K.S.A. 19-504 provides for the filling of that vacancy in the manner prescribed for filling vacancies in the office of member of the house of representatives (K.S.A. 1979 Supp. 25-3901 et seq.). The person so appointed shall hold office for the remainder of the unexpired term and until a successor is elected and qualified, as provided by 19-504. It is of no consequence that the person vacating the office of county treasurer had been appointed to fill a previous vacancy in the office and that a successor in office, whose term commences at the end of the appointee's term, has since been elected. The vacancy created by the appointee shall be filled in the manner provided by K.S.A. 19-504. There is no authority enabling the elected successor to automatically assume the office to fill the vacancy described.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Steven Carr
Assistant Attorney General

RTS:BJS:SC:pf