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June 23, 1981

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ATTORNEY GENERAL OPINION NO. 81- 143

Mr. David W. Kester, Director
Legal Services Section
Kansas Department of Education
120 East Tenth Street
Topeka, Kansas 66612

Re: Elections -- School District Elections -- Vacancies
on Boards of Education Filled by Appointment

Synopsis: A board of education has an affirmative duty to act within a reasonable time, after the occurrence of a vacancy on the board, to publish notice of that fact, and to fill the vacancy by appointment.

If a board member position becomes vacant during either the first or second year of the board member's term of office, and prior to December 31 of the first even-numbered year following that member's election to the board, the term of office of the person appointed to fill the vacancy runs from the date of appointment to July 1 of the next odd-numbered year.

In April of that odd-numbered year, the voters of the district are to elect a person to serve from July 1 of that year until June 30 of the next odd-numbered year, *i.e.*, a term of two years. Cited herein: K.S.A. 25-2022.

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Dear Mr. Kester:

On behalf of Unified School District No. 497 (Lawrence), you request an interpretation of K.S.A. 25-2022 as it relates to

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the following situation. A member of the Board of Education of U.S.D. No. 497 was reelected in April, 1981. In the first week of June, 1981, this board member announced his intention to resign from the Board as of July 1, or as soon thereafter as the convenience of the Board may be accommodated. The Board has asked to be advised of its responsibility to appoint a new member to the Board to fill the vacancy, when it occurs, and the term of office to be served by the appointee.

K.S.A. 25-2022 provides:

"Any board shall have power to fill by appointment any vacancy which occurs thereon, and such appointee shall serve for the unexpired term. When a vacancy occurs, the board shall publish a notice one time in a newspaper having general circulation in the school district stating that the vacancy has occurred and that it will be filled by appointment by the board not sooner than fifteen (15) days after such publication. If such vacancy occurs before January 1 of an odd-numbered year leaving an unexpired term of more than two years such appointee shall serve until the July 1 after the following general school election

"In the latter event, the unexpired term of two years commencing July 1 after the following general school election shall be filled at such election and the ballots or ballot labels and returns of election with respect to such office shall be designated as follows: 'To fill the unexpired term.'" (Emphasis added.)

The provisions of this statute have been the subject of several Attorney General opinions, two of which answer the inquiries presented herein.

In Attorney General Opinion No. 76-282, a copy of which is attached hereto, Attorney General Schneider concluded that a board of education has an affirmative duty to act within a reasonable time, after the occurrence of a vacancy, to publish notice thereof, and to fill the vacancy by appointment. We concur in that opinion and, therefore, advise the Board of Education of U.S.D. No. 497 to fill the vacancy, by appointment, within a reasonable time, after the vacancy occurs. Of course, the provisions of K.S.A. 25-2022 will not be operative until there, in fact, is a vacancy on the board, and that vacancy will occur on the final date stated by the board member in his

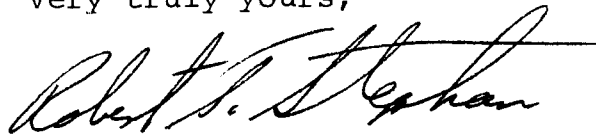
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letter of resignation. The letter of resignation should fix a date certain upon which the board member's resignation is to be effective. It is within a reasonable time from that date that the board should fill the vacancy.

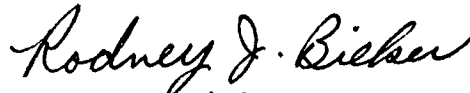
The question concerning the term of office of the person appointed to fill the vacancy on the Board is answered, by inference, in Attorney General Opinion No. 75-2, a copy of which also is attached hereto. In that opinion, Attorney General Vern Miller stated that whether a vacancy occurs in the first or second year of a four-year term, so long as it occurs prior to January 1 of the election year (in this case January 1, 1983), and there are more than two years of the unexpired term remaining, the voters of the district are entitled to fill the vacancy. We concur in Attorney General Miller's opinion, and express our opinion that the electors of U.S.D. No. 497 are to elect, at the general election to be held on April 5, 1983, a person to serve for the period of July 1, 1983, to June 30, 1985, inclusive.

What is to be inferred from the opinions of the Attorney General is that the term of office of a person, who is appointed to fill a vacancy which occurs before December 31 of the first even-numbered year after a general election, is from the date of such person's appointment to July 1 of the next odd-numbered year. For example, in this case, if the Board fills the vacancy on July 17, 1981, the term of the person so appointed will be from July 17, 1981, until June 30, 1983, inclusive. On July 1, 1983, the person elected by the voters on April 5, 1983, to fill the unexpired term of the person who resigned July 1, 1981, will begin his or her term of office. That term of office will expire June 30, 1985.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Rodney J. Bieker
Assistant Attorney General

RTS:BJS:RJB:jm

Enc.