



STATE OF KANSAS

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July 23, 1984

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ATTORNEY GENERAL OPINION NO. 84- 72

Max Steele, Commissioner
Greeley County Board of Commissioners
Greeley County Courthouse
Tribune, Kansas 67879

Re: Elections -- Filling of Vacancies -- Procedure;
Vacancy in Office of County Attorney

Synopsis: When a vacancy occurs in the office of a county attorney and it is impossible to fill the vacancy by appointment of a person elected by the party central committee as provided by K.S.A. 19-715(a) and 25-3902, the person appointed as temporary county attorney pursuant to K.S.A. 19-715(b), shall hold the position until such time as the vacancy may be filled in accordance with statutory procedures or until the next general election in which a county attorney may be elected. Cited herein: K.S.A. 19-715; 25-3901; 25-3902; 75-117.

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Dear Mr. Steele:

As a member of the Greeley County Board of Commissioners you have requested an opinion on the following question: "Where a vacancy has occurred in a county office and the office holder belongs to a political party which has no county central committee, can a vacancy be filled pursuant to K.S.A. 25-3902?" We are informed that the vacancy in question exists in the office of Greeley County Attorney.

K.S.A. 19-715 provides for the filling of a vacancy in the office of a county attorney. That section provides in pertinent part:

"(a) When a vacancy occurs in the office of county attorney, the vacancy shall be filled by appointment by the governor of a person elected by a district convention, in accordance with K.S.A. 25-3902 and amendments thereto

"(b) When a vacancy occurs in the office of county attorney, the district judges of the judicial district in which the county is located shall appoint a person to serve as temporary county attorney until a person is appointed and qualifies to fill the vacancy in accordance with subsection (a). A person appointed as temporary county attorney shall be an elector of the same political party as such person's predecessor.

"(c) A county attorney or temporary county attorney appointed pursuant to this section shall have the same powers and duties and be subject to the same qualifications as an elected county attorney." (Emphasis added.)

Thus, a vacancy in the office of county attorney should be filled in accordance with the procedures established by K.S.A. 25-3901 et seq. K.S.A. 25-3902 provides that the chairperson of the party central committee (of the same political party as the office holder whose position is vacant) shall call a convention of all party committeemen and women in the district. This convention elects a person to be appointed by the governor to fill the vacancy.

You point out that in Greeley County there is no party central committee nor county chairperson of the same party as the former county attorney. It is clear that, in these circumstances, the procedures established by K.S.A. 25-3902 cannot be followed. There is no one to call the convention and no one to be called to the convention.

The statutes, however, do not contemplate an extended vacancy in the office. It is the general rule, as stated at 67 C.J.S. Officers, §74 that:

"The law abhors vacancies in public offices, and courts generally indulge in a strong presumption against a legislative intent to create, by statute, a condition which may result in an executive or administrative office becoming for

any period of time, wholly vacant and unoccupied by one lawfully authorized to exercise its functions."

In this instance, K.S.A. 19-715(b) provides that whenever a vacancy occurs in the office of a county attorney, the district judges of the judicial district in which the county is located shall appoint a person "to serve as temporary county attorney until a person is appointed and qualifies to fill the vacancy in accordance with subsection (a)." The person so appointed is to be elector of the same political party as his or her predecessor. When filling the vacancy in accordance with subsection (a) of 19-715 is impossible, as it is here, it is our opinion that the person appointed pursuant to subsection (b) shall hold the office until such time as a successor may be elected, either by a party convention as provided by K.S.A. 19-715(a) and 25-3902, or until a successor is elected and qualified at the next general election at which a county attorney may be elected. K.S.A. 19-715(a) provides that if the vacancy in office occurs on or after May 1 of the second year of term, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. If the vacancy occurs before May 1 of the second year of the term, the appointee serves only until a successor is elected at the next county general election to serve the remainder of the term. In our opinion, a person appointed by the district judges under K.S.A. 19-715(b), in a case where the vacancy cannot be filled pursuant to subsection (a), will serve in the same manner as provided in subsection (a), depending upon what point in the term of office the vacancy occurred.

We also note that K.S.A. 75-117 may be relevant to this situation. That statute provides:

"When the district judges or judges of the district court of any judicial district in the state are authorized by law to appoint some person to fill a regular term or a vacancy in a public office and said judges fail to make an appointment within ten days after the expiration of a regular term or a vacancy occurs, the appointment shall then be made by the governor of the state."

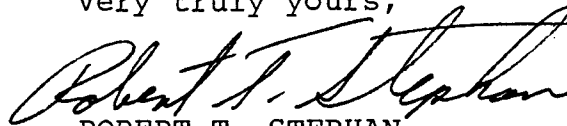
Thus, if the district court judges fail to appoint a person to fill a vacancy in the office of county attorney pursuant to K.S.A. 19-715(b) within ten (10) days of the occurrence of the vacancy, the governor of the state must act to fill the vacancy.

In conclusion, it is our opinion that when a vacancy occurs in the office of county attorney and it is impossible to fill the

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vacancy as provided in K.S.A. 19-715(a) and 25-3902, the person appointed as temporary county attorney pursuant to K.S.A. 19-715(b) shall hold the position until such time as the vacancy may be filled in accordance with statutory procedures or until the next general election in which a county attorney may be elected.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:JSS:MFC:crw