



STATE OF KANSAS

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December 13, 1984

ATTORNEY GENERAL OPINION NO. 84-123

Mayor Jacqueline Carter
Ensign, Kansas 67841

Re: Cities, Third Class -- Election, Appointment and
Removal of Officers -- Election of Officers; Terms;
Vacancies

Synopsis: Where there are three simultaneous vacancies on the city council of a third class city, the mayor must appoint an elector to fill the first vacancy with the consent of the two remaining council members. Thereupon, that appointee having taken office, the mayor should proceed to fill the second vacancy, with the consent of a majority of all council members (including the member just appointed), and so on, until all vacancies are filled. Cited herein: K.S.A. 15-105, 15-201.

* * *

Dear Ms. Carter:

You request our interpretation of K.S.A. 15-201. Specifically, you advise that due to the recent death of the former mayor of the City of Ensign, and the probable resignation of two council members in the near future, the city will be left with only a mayor and two council members. You request our opinion concerning the procedure to be followed in filling the three vacancies on the city council.

K.S.A. 15-201 provides, in part, as follows:

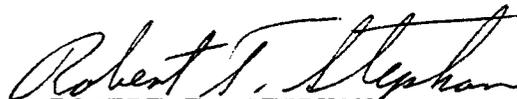
"In case of a vacancy in the council occurring by reason of resignation, death, or removal from

office or from the city, the mayor, by and with the advice and consent of the remaining councilmembers, shall appoint an elector to fill the vacancy until the next election for that office In case of a vacancy in the office of mayor, the president of the council shall become mayor until the next regular election for that office and a vacancy shall occur in the office of the councilmember becoming mayor." (Emphasis added.)

In Tucker v. Raney, 145 Kan. 256, 257 (1937), the Kansas Supreme Court, in construing the above-quoted provision, ruled that "the remaining councilmen constitute the body which is authorized to approve and consent to the appointment made by the mayor." Pursuant to that decision, the remaining council members may consent to an appointment even though they do not constitute a majority of the five-member council prescribed by K.S.A. 15-105.

Additionally, in our judgment the mayor should fill (by appointment) the first vacancy with the consent of the two remaining council members. Thereupon, that appointee having taken office, the mayor should proceed to fill the second vacancy, with the consent of a majority of all council members (including the member just appointed), and so on, until all vacancies are filled.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:sc