



STATE OF KANSAS

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July 15, 1986

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ATTORNEY GENERAL OPINION NO. 86-100

The Honorable Jack H. Brier  
Secretary of State  
Capitol Building, 2nd Floor  
Topeka, Kansas 66612

Re: Elections -- Conduct of Elections -- Procedure for  
Filling Vacancy in Office of Judge of the District  
Court

Synopsis: K.S.A. 1985 Supp. 25-312a provides that a vacancy in the office of judge of the district court shall be filled at the next general election that occurs more than 30 days after such vacancy. Where such vacancy occurs in the office of district judge, which office was not subject to election at the next general election, and the vacancy occurs after the filing deadline but prior to the primary, a party candidacy is created as provided in K.S.A. 25-3906. Pursuant to that statute, such vacancy in a party candidacy shall be filled by district convention held as provided in K.S.A. 25-3904. Since in this instance, the office of district judge was not subject to election at the next general election, no party had a candidate running for the position of district judge. Consequently, each party may place a candidate on the ballot pursuant to the district convention procedure. The person elected at the general election to the position of district judge will commence his or her official duties on the second Monday in January,

1987, and will serve for the remainder of the unexpired term. Cited herein: K.S.A. 1985 Supp. 312a; K.S.A. 25-313; 25-3901; 25-3904; 25-3906.

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Dear Secretary Brier:

As Secretary of State for the State of Kansas, you request our opinion on the election procedures which should be followed by the election officer in Wyandotte County in determining whose names shall be placed on the ballot in the election for the Office of District Judge, Division 1, Wyandotte County. You inform us that District Court Judge James L. Lysaught, whose term of office was due to run until January, 1989, retired from his position on June 18, 1986, eight days after the deadline for filing for office. Chief Justice Alfred G. Schroeder of the Kansas Supreme Court sent Governor Carlin a letter dated June 19, 1986, indicating the vacancy in this office should be filled pursuant to K.S.A. 1985 Supp. 25-312a.

K.S.A. 1985 Supp. 25-312a provides as follows:

"Except as otherwise provided in K.S.A. 20-2903 through 20-2913, and amendments thereto, whenever a vacancy occurs in the office of judge of the district court, it shall be filled by appointment by the governor. At the next general election that occurs more than 30 days after such vacancy, the office shall be filled by election for a term commencing as provided in K.S.A. 25-313 and amendments thereto. Any appointment made by the governor as required by this section shall be made within 60 days after the vacancy occurs."  
(Emphasis added.)

The issue, which appears to be one of first impression in Kansas, is how to place candidates for the office of district judge on the ballot at the general election in November, when the office would not have been subject to election until 1988 and consequently no one has filed for this position. Due to the provisions of K.S.A. 1985 Supp. 25-312a, which specifically provide that a vacancy will be filled at the next general election that occurs more than 30 days after such

vacancy, it is our opinion that a candidacy has been statutorily created, and that because there are no candidates representing any political party, there are vacancies in the party candidacies for the office of judge of the district court.

K.S.A. 25-3906 is applicable to the situation where a vacancy in a district office occurs after the filing deadline but prior to the primary. That statute provides at subsection (b):

"This section shall apply to any vacancy in a party candidacy which occurs after the closing time for filing to be a candidate specified in K.S.A. 25-205 and prior to or on the day of the primary election, if such occurrence results in a political party not having a primary candidate for such office." (Emphasis added.)

The statute states at subsection (a):

"Whenever a vacancy in a party candidacy for any national, state, district or county elective office occurs under the circumstances specified in this section, such vacancy shall be filled by the party committee of the congressional district, county or state, as the case may be, except that if such vacancy is in a party candidacy for a district office or for the office of member of the state board of education, it shall be filled by district convention held as provided in K.S.A. 25-3904, or as provided in K.S.A. 25-3904a, and except as otherwise provided in subsection (d) and (e).

In that the office of district judge falls within the definition of a "district office" under K.S.A. 25-3901, K.S.A. 25-3906 dictates that said vacancy shall be filled by district convention held as provided in K.S.A. 25-3904. That statute, which deals with the procedure for filling a vacancy in a candidacy for a district office, states in relevant part as follows:

"(a) Whenever a district convention is provided by law to be held to elect a person to fill a vacancy in a party candidacy for a district office, the county chairman designated in subsection (b) or (c) shall call a convention of all committeemen and committeewomen of the political party from the precincts in such district.

. . . .

"(e) The convention shall organize by electing a permanent chairman and such other officers as it may deem necessary. After the convention is organized, it shall elect a person to fill such vacancy in the party candidacy."

Thus, the statute calls for precinct committeemen and committeewomen to elect a person to fill the vacancy in the party candidacy by the district convention procedure. While this procedure has undoubtedly been used many times to fill a vacancy created by the death or resignation of one party's candidate, the situation which has arisen in Wyandotte county appears to be unprecedented in Kansas. In this instance, no party had a candidate running for Judge Lysaught's position, as his term was not due to expire until 1989. Therefore, in our opinion, each party which has the right under K.S.A. 25-3904 to place a candidate on the ballot by the district convention procedure is entitled to select a candidate.

Although we know of no other situation where more than one candidate has been placed on the ballot pursuant to the district convention procedure, we find no limitations in K.S.A. 25-3904 which would prevent such an occurrence. In fact, given the requirement in K.S.A. 1985 Supp. 25-312a that the office shall be filled by election, we think this is the only available procedure which the election officer may follow in determining whose names to place on the ballot.

Although you did not specifically request our opinion on the duration of the term which the newly elected candidate will serve, we feel practical considerations for the candidates

dictate we answer this question. K.S.A. 25-312a was amended in 1985 to provide:

"[T]he office shall be filled by election for a term commencing as provided in K.S.A. 25-313 and amendments thereto."

K.S.A. 25-313, which deals with the commencement of terms of office, states:

"The regular term of office of all state, district, county and township officers shall begin on the second Monday in January next after the election, . . . ."

Thus, under this statute the person elected to fill the vacancy created by Judge Lysaught's retirement will commence his official duties on the second Monday in January, 1987. Furthermore, K.S.A. 25-3906, the statute governing elections for vacancies in candidacies occurring after the filing deadline and prior to the primary, states at subsection (c):

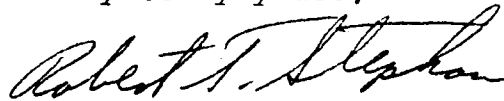
"This section shall apply whenever a vacancy occurs in an office, and it is provided by law that such vacancy shall be filled by appointment until the next general election at which time a person is to be elected to fill the unexpired term, . . . ." (Emphasis added.)

The statute clearly provides that the newly elected candidate will serve out the unexpired term of the official who was originally elected to serve in that position. Accordingly, the candidate elected in November to replace Judge Lysaught will serve a two year term ending in January, 1989, the date when the term for District Judge, Division 1, in Wyandotte County was originally due to expire.

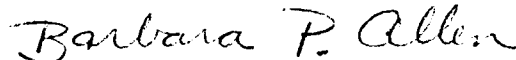
In conclusion, K.S.A. 1985 Supp. 25-312a provides that a vacancy in the office of judge of the district court shall be filled at the next general election that occurs more than 30 days after such vacancy. Where such vacancy occurs in the office of district judge, which office was not subject to election at the next general election, and the vacancy occurs after the filing deadline but prior to the primary, a party candidacy is created as provided in K.S.A. 25-3906. Pursuant

to that statute, such vacancy in a party candidacy shall be filled by district convention held as provided in K.S.A. 25-3904. Since in this instance, the office of district judge was not subject to election at the next general election, no party had a candidate running for the position of district judge. Consequently, each party may place a candidate on the ballot pursuant to the district convention procedure. The person elected at the general election to the position of district judge will commence his or her official duties on the second Monday in January, 1987, and will serve for the remainder of the unexpired term.

Very truly yours,



ROBERT T. STEPHAN  
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Barbara P. Allen  
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RTS:JLM:BPA:crw