ATTORNEY GENERAL OPINION NO. 92-146

Rex A. Sharp
Liberal City Attorney
419 North Kansas
P.O. Box 2619
Liberal, Kansas 67905-2619

Re: Counties and County Officers--County Commissioners--Elections to Fill Positions Created by Increase in Number of Commissioner Districts; Commencement of Term


Dear Mr. Sharp:

On behalf of the city of Liberal you request our opinion regarding the term of office of two newly elected Seward county commissioners. The two positions in question are those which were created when Seward county increased the number of county commissioner districts. The positions are currently held by governor appointees pursuant to K.S.A. 1991 Supp. 19-203(c), as amended by L. 1992, ch. 38, § 3. You question whether, under subsection (c), the two newly elected commissioners should take office immediately rather than on
the second Monday in January as provided in K.S.A. 19-202(d), as amended by L. 1992, ch. 38, § 2. You explain that the city of Liberal is concerned that procedural problems regarding who should be seated may jeopardize joint actions taken by the city and county.

K.S.A. 1991 Supp. 19-203(c), as amended by L. 1992, ch. 38, § 3, provides as follows:

"Vacancies created by an increase in the number of county commissioner districts in a county pursuant to K.S.A. 19-204, and amendments thereto, shall be filled by appointment of the governor. The governor shall make such appointments within 30 days of the date of the adoption of the resolution dividing the county into commissioner districts or within 30 days of the date of the order of the district court dividing the county into commissioner districts as required by section 1. Such appointees shall serve until successors are elected and qualified at the next general election. If at the next general election following such appointments, more than a simple majority of commissioners are elected, persons elected to the positions created by an increase in the number of districts shall be elected for two year terms and until their successors are qualified. Thereafter such members shall be elected to four year terms and until their successors are qualified. The provisions of this subsection shall apply to positions created by an increase in the number of districts at the election held in November 1990 and all such elections thereafter." (Emphasis added).

If a simply majority or fewer commissioners are elected, all would hold office for a term of four years pursuant to K.S.A. 19-202(d), as amended by L. 1992, ch. 38, § 2. Thus, whether the commissioners are to serve two or four years, they are to serve regular terms as opposed to filling a vacancy for an unexpired term. The commencement of a regular term of office is provided for in K.S.A. 25-313:
"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, except as otherwise provided by law."


"Except as proved by K.S.A. 19-203, and amendments thereto, all county commissioners shall hold office for a term of four years from the second Monday of January next after their election and until their successors are qualified."

The exception to this provision refers to the length of the term for certain newly elected commissioners under K.S.A. 1991 Supp. 19-203, as amended, not the commencement date of the term. Thus, in our opinion, county commissioners elected to positions created by an increase in the number of commissioner districts are to take office on the second Monday in January following their election. This will allow for the smooth transition period contemplated by K.S.A. 25-313 and 19-202(d), as amended, without unduly violating the policy of preferring elected over appointed representation.

Very truly yours,

ROBERT T. STEPHAN
Attorney General of Kansas

Julene L. Miller
Deputy Attorney General

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