



STATE OF KANSAS

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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

Synopsis: County commissioners elected to positions created  
by an increase in the number of commissioner  
districts pursuant to K.S.A. 1991 Supp. 19-203(c),  
as amended by L. 1992, ch. 38, § 3, are to take  
office on the second Monday in January following  
their election. Cited herein: K.S.A. 19-202, as  
amended by L. 1992, ch. 38, § 2; K.S.A. 1991 Supp.  
19-203, as amended by L. 1992, ch. 38, § 3; K.S.A.  
25-313.

\* \* \*

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."

K.S.A. 1991 Supp. 19-203(c), as amended, does not "otherwise provide" for a commencement date of the term of the commissioner positions in question. See Stawitz v. Nelson, 188 Kan. 430, 432 (1961); Goodin v. Thoman, 10 Kan. \*191, \*198 (1872). Further, K.S.A. 19-202(d), as amended, states:

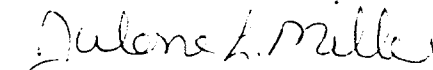
"Except as proved by K.S.A. 19-203, and amendments thereto, all county commissioners shall hold office for a term of four years from the second Monday of January next after their election and until their successors are qualified."

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

RTS:JLM:jm