



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

January 17, 1975

Opinion No. 75- 19

Mr. Lowell F. Hahn
County Attorney
County of Phillips
Phillipsburg, Kansas 67661

Dear Mr. Hahn:

You advise that in the November 1974, general election, your tenure of ten years as county attorney of Phillips County was apparently ended with the election of W. C. Sullivan to that office. You advise that since that time, Mr. Sullivan has announced that he will not accept the office. The question arises, thus, whether you, an incumbent county attorney, may, or even must, hold over until a successor is qualified.

As you point out, K.S.A. 19-701 states only that the county attorney is elected for a "term of two (2) years"

"Except as otherwise provided by law a county attorney shall be elected in each county organized for judicial purposes, who shall hold his office for a term of two (2) years"

This provision, in and of itself, does not suggest that the term of two years may be extended by holding over, except, of course, "as otherwise provided by law" Article 4, § 2 of the Kansas Constitution does so provide:

"All county and township officers shall hold their offices for a term of two years and until their successors are qualified"

It is, accordingly, our opinion that upon the failure of Mr. Sullivan to qualify and assume the office, that as the

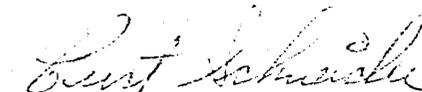
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incumbent, you continue to hold the office by virtue of Article 4, § 2 of the Kansas Constitution, until such time as a vacancy results, and a successor is appointed or elected and qualifies.

You advise, further, that some question has arisen as to what a person elected to county office must do to qualify therefor, in order to assume the office to which he or she is elected. Insofar as concerns persons elected to the county attorney, it is necessary only that the person elected file the official bond required by K.S.A. 19-701 and K.S.A. 19-4201. You also inquire during what period of time an elected person must qualify in order to assume the office. K.S.A. 19-701 requires only that the person elected to the office of county attorney execute the required bond "before he enters upon the duties of his office" K.S.A. 19-4201 requires the filing of a surety by an elected official "before entering upon the duties of his office" We find no decision of the Kansas Supreme Court which deals with this question, and scant authority from other jurisdictions which provides any helpful guidance on this question. 63 Am.Jur.2d, Public Officers and Employees, § 121. Apparently, at this point the question is hypothetical only. Should Mr. Sullivan seek to qualify by filing the necessary surety beyond what may be considered a reasonable time, i.e., after, certainly, a period of several months, we will be pleased to consider the question anew, based upon the actual facts and circumstances as they appear at that time, if our opinion is requested. At the present time, however, we find insufficient authority on the question to provide any definitive and helpful views on the point.

To recapitulate our views, it is our opinion that upon the failure of Mr. Sullivan to qualify by filing the requisite surety bond, the office of county attorney does not become vacant, and you, as the incumbent, continue to serve in that position until a successor is elected and qualifies, or until a vacancy occurs, and a successor is appointed. I enclosed a copy of opinion no. 74-337, which deals with the questions you raise. We note that K.S.A. 19-2602, referred to therein, has been repealed by ch. 125, § 2, L. 1973.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure