



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

August 25, 1976

ATTORNEY GENERAL OPINION NO. 76- 264

Honorable Bob E. Schock
Mayor
P. O. Box 404
Haysville, Kansas 67060

RE: Cities--Offices--Vacancies

SYNOPSIS: Members of a city council, who were appointed by the council to fill vacancies therein pursuant to a city charter ordinance, which appointments were for the period until the next ensuing city election, continue to hold said offices, notwithstanding no persons were elected to the positions at the first city election following such appointments, and hold their positions until their successors are elected and qualified.

* * *

Dear Mayor Schock:

You advise that two members of the city council of the City of Haysville hold office by virtue of appointments made by the city council, one being appointed August 11, 1975, and the other on December 29, 1975. Section 2 of Charter Ordinance No. 1 of the City of Haysville, as amended by section 1 of Charter Ordinance No. 1-A, states in pertinent part thus:

"[A]ll vacancies shall be filled, at the option of the remaining members of the city

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council, either by appointment by the remaining members of the city council or by a special election; said appointment or special election shall be for the period from and after the date of appointment or election until date of the next April city election, at which election said unexpired term shall be filled by election."

K.S.A. 25-2118 states thus:

"The city clerk shall certify to the county election officer a list of all city offices to be voted upon at each city election not later than January 1 of every year that such city has a city election."

You advise that the positions were not placed on the April, 1976, city election ballot, and as a result, no persons were elected to complete the unexpired terms for these positions. You inquire concerning the status of the two persons now serving on the council pursuant to the appointments described above.

The facts presented here are closely analogous to those in *Stawitz v. Nelson*, 188 Kan. 430, 362 P.2d 629 (1961). There, Nelson was appointed in September, 1960, to complete the term of an office. He and Stawitz also opposed each other in the general election two months later, Stawitz claimed victory, but the court held that the election was void:

"The election--as to the office of marshal, being void--no one was elected. No successor having been elected, it follows, therefore, that Nelson was, and is, entitled to the office until such time as his successor is elected and qualified." 188 Kan. at 437.

Thus, in the facts presented here, the appointments by the council were made to fill vacancies. The appointments were for

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the period "until date of the next April city election," at which time the unexpired terms were to be filled. No persons were elected at that election, and as a result, under the general rule adopted by the court in *Stawitz, supra*, the incumbent appointees hold over in office until their successors are elected and qualified. Thus, there exists no vacancies to be filled in these two positions at the present time.

This conclusion may differ from a telephone conversation between your city attorney, Mr. Schoaf, and a member of my staff. However, your letter prompted further research.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:bw

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