



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 11, 1977

ATTORNEY GENERAL OPINION NO. 77- 13

Mr. Phillip H. Schuley
Assistant City Attorney
City Hall
8500 Santa Fe Drive
Overland Park, Kansas 66212

Re: Cities--Elections--Vacancies

Synopsis: Under charter ordinance no. 16 of the City of Overland Park, a person appointed to fill a vacancy on the city council of that city serves until the next regular city election. Any person so appointed may stand for election at that time to complete the unexpired term, or may stand for election to serve a full term of four years in the other council position from that same ward. The precinct committee members within the ward have no authority to assign a candidate to seek the nomination or election to any position which is to be filled at the regular city election.

* * *

Dear Mr. Schuley:

You inquire concerning the election of members of the city council of the City of Overland Park.

You advise that in 1973, Mr. Gibson was elected to a term of four years on the council, representing the fourth ward, and that in 1975, Mr. Pray was also elected to a four-year term, representing that ward. In July, 1976, Mr. Pray resigned his office, and Mr. Byron Loudon was appointed by the council, pursuant to the recommendation of precinct committee members, to fill the resulting vacancy. Since that time, Mr. Gibson has also resigned, effective December 31, 1976, and Mr. Denis Stewart has been appointed to fill the vacancy resulting from that resignation.

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Section 6 of Charter Ordinance No. 13 of the City of Overland Park, as amended by section 1 of Charter Ordinance No. 16, provides in pertinent part thus:

"(b) . . . A vacancy for any reason in the office of councilman shall be filled by the council from a recommendation submitted to the council by the precinct committee people from the political party represented by the councilman whose office is vacated and such recommendation shall be communicated to the council by the party's City chairman and thereafter such person shall serve in such office until the next regular City election and a successor has been duly elected and qualified. If the councilman who vacated the office had a term which would not expire at such regular City election, then the successor elected at such regular City election is elected to serve such unexpired term."

The question arises whether Mr. Loudon, if elected, would be elected to a term of two years, that being the unexpired term of Mr. Pray, whose position Mr. Loudon was appointed to fill, or whether Mr. Loudon would be elected to a term of four years because his appointment to the council was prior in time to that of Mr. Stewart, and thus Mr. Loudon has seniority.


Mr. Loudon was appointed to fill the position vacated by Mr. Pray only "until the next regular City election and [until] a successor has been duly elected and qualified." At the next regular city election, the position held by Mr. Pray will be filled by the voters, and the person so elected will serve until the expiration of the term to which Mr. Pray was elected, a term of four years expiring in 1979. If Mr. Loudon becomes a candidate for election to serve the unexpired term of Mr. Pray, he will, if elected, serve the term expiring in 1979. If he becomes a candidate for the seat formerly held by Mr. Gibson, he will, if elected, serve the full four-year term commencing in 1977, for Mr. Gibson's term expires at that time.

The precinct committee members from the political party which both council members represent have no voice in the designation of which of the appointees is to stand for the four-year term.

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Either Mr. Loudon or Mr. Stewart is free to declare his candidacy for either seat, and the precinct committee members involved have no authority to assign either appointee to a particular candidacy.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj