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February 17, 1981

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ATTORNEY GENERAL OPINION NO. 81- 46

William B. Elliott
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Re: Cities of the Third Class--Election, Appointment and
Removal of Officers--Filling of Vacancies

Synopsis: Where a person is appointed to fill a vacancy in the office of councilman of a city of the third class pursuant to K.S.A. 15-201, and by that statute is to serve "until the next election for that office," such person is to serve the unexpired portion of that councilman position's two-year term of office. Even though there may be held an election of other councilmen prior to the expiration of such term of office, K.S.A. 15-201 does not require or authorize the election of a successor to fill the unexpired term of such office.

Where a person has mistakenly filed his statement of candidacy for such unexpired term of office, such declaration is to be disregarded, and such person cannot be considered a candidate for some other office. Cited herein: K.S.A. 1980 Supp. 13-1806, K.S.A. 15-201.

* * *

Dear Mr. Elliott:

You have requested our opinion as to whether it will be necessary, at the time of the forthcoming city election, to have an election to fill

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the balance of an unexpired term of office for one of the positions on the City Council of Hill City, Kansas.

Before discussing the factual setting giving rise to your inquiry, it is appropriate to note that the questions you have posed concern the application of K.S.A. 15-201, as it has been modified by Charter Ordinance No. 5 of the City of Hill City. The portions of K.S.A. 15-201 pertinent here are as follows:

"Every two (2) years an election shall be held for a mayor, and five (5) councilmen. The mayor and councilmen shall hold their offices for two (2) years and until their successors are elected and qualified.

"In case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining councilmen, shall appoint some suitable elector to fill the vacancy until the next election for that office."
(Emphasis added.)

While the foregoing statutory provisions are applicable to cities of the third class having the mayor-council form of government, the City of Hill City on June 19, 1972, enacted its Charter Ordinance No. 5, which exempted the city from the first paragraph of this statute (quoted above) and provided substitute and additional provisions in lieu thereof. Section 2 of that Charter Ordinance provided that, at the city general election in 1973, the mayor and two councilmen would be elected for terms of two years and three councilmen would be elected for terms of one year. Section 3 of that ordinance then provides:

"Section 3. That thereafter on the first Tuesday in April of each even-numbered year, three councilmen shall be elected for a term of two years and on the first Tuesday in April of each odd-numbered year, a Mayor and two Councilmen shall be elected for a term of two years."

Thus, even though the charter ordinance has not changed the requirement of 15-201 that the mayor and councilmen are elected for two-year terms, it has eliminated the statute's requirement that all six city officers be elected at the same time, and has staggered their election,

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so that there is an annual city election in Hill City to elect three of these officers. It also is apparent that the portion of the second paragraph of 15-201 quoted above remains applicable to Hill City.

In light of these provisions, you advise that in the latter part of 1980 a vacancy occurred in one of the councilmen positions for which there had been an election in April of that year, and in accordance with the above-quoted provisions of 15-201 which remain applicable to Hill City, a successor was appointed to fill the vacancy. However, you further relate that, just prior to the deadline for filing statements of candidacy for city offices to be elected at the forthcoming city election, an individual filed his statement of candidacy for the "unexpired term of office" of that particular councilman position, and you have inquired whether an election for such unexpired term of office is required to be held.

In our judgment, such election is neither required nor authorized by K.S.A. 15-201 and cannot be held. Of pertinence to our conclusion is the emphasized language of the above-quoted provisions of 15-201. It requires, in effect, that a person appointed to fill a vacancy in the office of councilman shall serve until the next election for that office. In this case, pursuant to the requirements of Hill City's Charter Ordinance No. 5, the next election for that position on the city council will be on the first Tuesday in April of 1982, and by virtue of the plain and unambiguous language of 15-201, the successor appointed in 1980 to fill a vacancy in that position is to serve until the 1982 city election. We believe our conclusion is consonant with the following statement of the Kansas Supreme Court in City of Kiowa v. Central Telephone & Utilities Corporation, 213 Kan. 169 (1973):

"A primary rule for the construction of a statute is to find the legislative intent from its language, and where the language used is plain and unambiguous and also appropriate to the obvious purpose the court should follow the intent as expressed by the words used and is not warranted in looking beyond them in search of some other legislative purpose or extending the meaning beyond the plain terms of the Act. (Alter v. Johnson, 127 Kan. 443, 273 Pac. 474; Hand v. Board of Education, 198 Kan. 460, 426 P.2d 124; City of Overland Park v. Nikias, 209 Kan. 643, 498 P.2d 56; Hunter v. Haun, 210 Kan. 11, 499 P.2d 1087.)" 213 Kan. at 176.

Of similar import is the Court's pronouncement in Lakeview Gardens, Inc. v. State, ex rel. Schneider, 221 Kan. 211 (1976):

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"[T]his court must ascertain and give effect to the intent of the legislature. In so doing we must consider the language of the statute; its words are to be understood in their plain and ordinary sense. (Hunter v. Haun, 210 Kan. 11, 13, 499 P.2d 1087; Roda v. Williams, 195 Kan. 507, 511, 407 P.2d 471.) When a statute is plain and unambiguous this court must give effect to the intention of the legislature as expressed rather than determine what the law should or should not be. (Amoco Production Co. v. Arnold, Director of Taxation, 213 Kan. 636, 647, 518 P.2d 453; Jolly v. Kansas Public Employees Retirement System, 214 Kan. 200, 204, 519 P.2d 1391.)" 221 Kan. at 214.

In addition to what is plainly stated by this statute, we believe it significant what the statute does not say. It does not provide that a person appointed to fill a vacancy serves until the next election of councilmen or until the next city general election. Such requirements are familiar to city election statutes (see, e.g., K.S.A. 1980 Supp. 13-1806 which provides that a successor selected to fill a vacancy serves "until the next city general election"), but no such requirement is imposed in 15-201. Instead, it plainly requires that the appointed councilman will serve until the next election for that office.

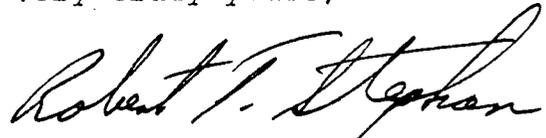
We also note that the same result would obtain in a third class city which has not adopted a charter ordinance providing for annual city elections. There, of course, K.S.A. 15-201 would govern, and there would not be a city election in even-numbered years, as there was in the situation you have posed, due to the charter ordinance provisions. However, in a comparable situation governed solely by the provisions of 15-201, if a vacancy occurs at the same point in a councilman's term of office as did the vacancy under consideration here, the successor appointed to fill the vacancy would serve "until the next election for that office," which would be the next city general election. In that situation the successor's term of office would be identical in length to the term of office that will be served by the councilman appointed in Hill City to fill the vacancy which occurred in 1980. Thus, the statute's provisions for filling vacancies will apply with equal force in either situation, which is further evidence that our conclusion accurately reflects the legislature's intent.

Anticipating the foregoing conclusion, you also have asked whether the individual who filed for the unexpired term of office should be regarded as having filed his statement of candidacy for one of the

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two council positions for which there will be an election in 1981. In our judgment, he should not. That individual filed his statement of candidacy for a particular office. We recognize that he mistakenly did so, since there will be no election for that office in 1981. Nonetheless, he was quite specific in his declaration, and we find no basis for imputing to him an intent to be a candidate for some other office.

Very truly yours,



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Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:phf