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March 31, 1982

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ATTORNEY GENERAL OPINION NO. 82- 75

The Honorable Jack H. Brier
Secretary of State
2nd Floor - Capitol
Topeka, Kansas 66612

Re: Courts -- Nonpartisan Selection of Judges of the
District Court -- Effect of Abandoning Nonpartisan
Method on Terms of Judges Appointed to Fill Vacancies

Synopsis: At the general election on November 4, 1980, the qualified electors of the twenty-ninth judicial district approved a proposition to abandon the nonpartisan method of selecting judges of the district court (K.S.A. 20-2901 et seq.) and to thereafter elect such judges. However, the approval of such proposition does not affect the terms of office of each of the three judges of the district court in the 29th judicial district who are currently serving by virtue of being appointed to fill vacancies in their respective positions, pursuant to the nonpartisan method of selecting judges. Accordingly, each such judge shall serve until the second Monday in January, 1983, and at the general election in November of 1982, there shall be elected a successor to each of such judges to serve for a term of four years, commencing on the second Monday in January, 1983. Cited herein: K.S.A. 20-2901, 20-2908, 29-2909, 20-2911, 20-2912, 25-204.

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Dear Secretary Brier:

You have requested our opinion regarding your responsibilities under K.S.A. 25-204, predicated on a rather complicated set of facts. However, stated as simply as possible, your inquiry is prompted by the fact that, at the general election on

November 4, 1980, the qualified electors of the twenty-ninth judicial district (Wyandotte County) approved a proposition to abandon the nonpartisan method of selecting and retaining judges of the district court and to provide for the election of such judges. In essence, you have inquired as to the effect the adoption of such proposition has on the terms of office of three particular judges in this judicial district, all of whom were appointed to fill vacancies in their respective positions pursuant to the nonpartisan method of selecting judges.

As we understand the circumstances of their appointments:

1. On November 1, 1980, Dean J. Smith resigned his position of associate district judge of the twenty-ninth judicial district to accept an appointment to fill a vacancy in the office of district judge (division 3) of such judicial district. Such vacancy was created by the retirement of Harry G. Miller.
2. On December 16, 1980, Philip L. Sieve was appointed to fill the vacancy in the office of associate district judge created by the resignation of Dean J. Smith.
3. In October of 1980, Cordell D. Meeks, Jr., was appointed to fill a vacancy in the office of district judge (division 6) of the twenty-ninth judicial district. Such vacancy was created by the resignation of the incumbent, Cordell D. Meeks, Sr., which was submitted in August of 1980, to be effective January 1, 1981.
4. Each of these appointments was made by Governor Carlin pursuant to the nonpartisan method of selecting judges (K.S.A. 20-2901 et seq.), upon nominations made by the district judicial nominating commission of the twenty-ninth judicial district.

Having reviewed these facts in the light of relevant statutory provisions, we have concluded that the terms of office of each of the judges appointed to fill a vacancy in the office of judge of the district court in the twenty-ninth judicial district are not affected by the abandonment of the nonpartisan method of selecting judges in that judicial district.

Pertinent to this conclusion is K.S.A. 20-2901, which provides the procedure for simultaneously abandoning the nonpartisan method of selecting judges and adopting the procedure for electing judges. We note that this statute provides that, after the nonpartisan method has been rejected, vacancies "shall be filled in the manner provided by law for the filling of such vacancies in judicial districts that have not

adopted such nonpartisan method." However, nothing in that statute or elsewhere in the statutes concerning the selection or election of judges indicates that the legislature intended such change to have retrospective application, so as to affect the procedure for the filling of vacancies in effect prior to approval of the proposition. As stated in State v. Hutchison, 228 Kan. 279 (1980), "the general rule of statutory construction is that a statute will operate prospectively unless its language clearly indicates that the legislature intended that it operate retrospectively." Id. at 287, citing Nitchalls v. Williams, 225 Kan. 285 (1979). Moreover, there is nothing in these statutes which indicates that the adoption of such proposition is to affect the term of office of any judge then in office by virtue of the nonpartisan method of selecting judges.

Accordingly, we believe each of the judges continues to serve pursuant to the nonpartisan selection statutes under which he was appointed. Judge Smith was appointed to fill a vacancy which occurred prior to the 1980 general election (at which time the nonpartisan method was rejected), and his appointment to fill such vacancy also occurred prior to such election. Similarly, the vacancy filled by Judge Sieve occurred prior to such election, and even though his appointment was not effective until after such election, absent clear legislative intent to the contrary, we believe the statutes governing the filling of such vacancy at the time it occurred should continue to be applicable. Finally, even though the vacancy filled by the appointment of Cordell Meeks, Jr., occurred subsequent to said election, his appointment to fill such vacancy was made prior to the election, pursuant to the combined provisions of K.S.A. 20-2909 and 20-2911.

The first of these statutes, K.S.A. 20-2909, provides in pertinent part, as follows:

"Whenever a vacancy shall occur in the office of judge of the district court in any judicial district, or whenever a vacancy will occur in such office on a specified future date, the chief justice of the supreme court promptly shall give notice of such vacancy to the chairperson of the district judicial nominating commission of such judicial district." (Emphasis added.)

It is our understanding that, in August of 1980, the Chief Justice was advised of the intention of Cordell Meeks, Sr., to retire on January 1, 1981. Thus, since the vacancy in division 6 would occur on a specified future date, as contemplated by the language emphasized in the above-quoted

provisions of 20-2909, notice thereof was given to the district judicial nominating commission of the twenty-ninth judicial district, who proceeded under that statute to select nominees to submit to the governor, pursuant to K.S.A. 20-2910. As one of the nominees, the current incumbent was appointed by the governor pursuant to K.S.A. 20-2911, which provides in subsection (b), as follows:

"Whenever a vacancy in the office of judge of the district court exists at the time the appointment to fill such vacancy is made pursuant to this section, the appointment shall be effective at the time it is made, but where an appointment is made pursuant to this section to fill a vacancy which will occur at a future date, such appointment shall not take effect until said date." (Emphasis added.)

In accordance with the above-emphasized provisions, the appointment of Cordell Meeks, Jr., in October of 1980 did not take effect until January 1, 1981, the date when a vacancy in the office occurred. However, procedures were instituted to fill the vacancy and the appointment made, in accordance with the then applicable statutory provisions, in advance of the 1980 general election. Again, absent any clear expression of legislative intent to the contrary, we believe such appointment was validly made under the nonpartisan method of selecting judges. The appointment was made pursuant to statutes then applicable to the twenty-ninth judicial district, and even though the vacancy did not, in fact, occur until after the voters of the judicial district had rejected the nonpartisan method, we are unable to construe the provisions of K.S.A. 20-2901 referenced above as evidencing a legislative intent to nullify an appointment under K.S.A. 20-2911 that was valid at the time it was made.

The question then arises as to the terms of office as to each of these judges. It is important to note that, under the nonpartisan method of selecting judges, appointments to fill vacancies are made for a prescribed period of time, rather than for unexpired terms. Such is accomplished under the following provisions of K.S.A. 20-2912:

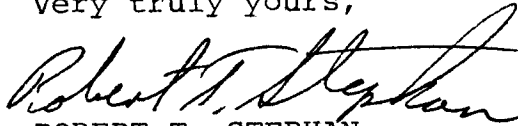
"Any such judge who is so appointed to fill a vacancy, or to fill a newly-created judgeship, or by reason of the expiration of a term of office, shall serve until the second Monday in January following the next general election which occurs after one year in office and shall be eligible to succeed himself or herself in office for a full term of four (4) years as provided in K.S.A. 20-2908."

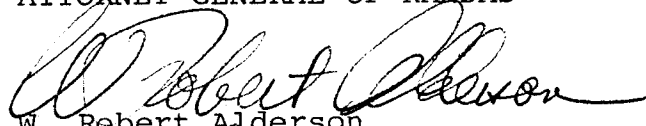
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Application of the above provisions to each of the appointments under consideration prescribes for each of them a term of office expiring on the second Monday in January of 1983. Thus, at the general election in November of 1982, it will be necessary to elect a successor to each such judge, and since the incumbents are not serving the balance of unexpired terms, each person so elected will serve for a full term of four years, commencing on the second Monday in January, 1983.

As to your specific question, therefore, we believe that, in carrying out your duty under K.S.A. 25-204 to advise county election officers of the offices for which candidates are to be nominated at the ensuing statewide primary election, your advice to the Wyandotte County Election Commissioner should be based on the conclusions reached herein.

Very truly yours,


ROBERT T. STEPHAN
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