



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN  
ATTORNEY GENERAL

October 9, 1986

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 86- 146

Mr. Morgan Metcalf  
Butler County Attorney  
Butler County Judicial Building  
El Dorado, Kansas 67042

Re: Cities of the Third Class--Election, Appointment  
and Removal of Officers--Election of Officers;  
Terms; Vacancies

Synopsis: Where there is a vacancy in the city council of a city of the third class, the mayor, by and with the advice and consent of the remaining council members, must appoint an elector to fill the vacancy until the next election for the office. K.S.A. 15-201. An "elector" is a person having the constitutional qualifications of an elector and who is registered to vote. The appointment of a person who is not registered to vote is void under the provisions of K.S.A. 15-201. Cited herein: K.S.A. 15-201.

\*

\*

8

Dear Mr. Metcalf:

You advise that an individual was appointed to fill a vacancy on the city council of Douglass in 1984, and that the individual was not and is still not a registered voter of the city. You ask whether he must resign or whether he may simply register now and continue to serve on the council.

K.S.A. 15-201 provides that where there is a vacancy in the city council of a city of the third class, the mayor, by and

with the advice and consent of the remaining council members, must appoint an elector to fill the vacancy until the next election for the office. An elector is a person having the constitutional qualifications of an elector and who is registered to vote. Coney v. City of Topeka, 96 Kan. 46 (1915).

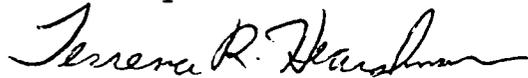
In Kansas Attorney General Opinion No. 81-112 (copy enclosed), we concluded that a person who was not a registered voter at the time of a city election was not eligible to election as mayor, and that said election was void. In accordance with the authorities cited in that opinion, it is our opinion that the appointment of a person to the Douglass city council who is not registered to vote (at the time of said appointment) is void.

Accordingly, the governing body of Douglass should make a new appointment to fill the vacancy in the subject office. If the governing body fails to make such an appointment and the subject individual continues to exercise the powers of a council member under the void appointment, you should file a quo warranto action. Similarly, if a new appointment (of a different individual) is made and the former de facto council member continues to assert a title to the office, a quo warranto action would be appropriate.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:JLM:TRH:jm  
Enclosure