



STATE OF KANSAS

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February 24, 1987

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ATTORNEY GENERAL OPINION NO. 87- 33

Marjoria Winn  
County Election Officer  
Wilson County Courthouse  
Fredonia, Kansas 66736

Re: Elections -- School District Elections -- Failure  
to Certify Vacancy on U.S.D. Board of Education

Synopsis: K.S.A. 25-2023 provides that a member of a board of education of a unified school district shall hold office until a successor is elected or appointed and qualified. If the clerk of the board of education fails to certify an upcoming vacancy in the school board, candidates are prevented from being elected to that position through standard election procedures. A board of education does not have appointment powers following its own error in failing to certify a vacancy. Therefore, the vacancy may be filled either by an individual who conducts a write-in campaign in the general election, or, if no person conducts such a campaign, the incumbent shall automatically hold over in office for another full four year term. Cited herein: K.S.A. 25-2007; 25-2017a; 25-2018; 25-2021; 25-2022; 25-2023.

Dear Ms. Winn:

As the county election officer for Wilson County, you request our opinion on a school election problem which has arisen in Wilson County. You inform us that U.S.D. #461 certified to the county election officer three vacancies on their school board for the April 1987 election, but that they neglected to certify, in error, school board position #7. As of July 1,

1987, position #7 will be vacant and will never have been placed before the public to vote upon. Thus, you inquire how this vacancy should be filled.

In order to answer your inquiry, it is necessary to examine the statutes which deal with school district elections. Of particular significance is K.S.A. 25-2023, which provides:

"Each member elected to a board of education shall hold office until a successor is elected or appointed and qualified and shall serve for a term of four (4) years."

While you inform us that the individual who presently holds position #7 on the board of education was appointed, rather than elected, to fill an unexpired term, we believe the guidelines set forth in K.S.A. 25-2023 are nevertheless applicable. Thus, by statute, the incumbent is to remain in office until a successor is either elected or appointed to that position.

The standard election procedure to be followed when positions on a board of education are up for reelection is as follows. The clerk of the board of education of every school district shall certify to the county election officer a list of all school offices to be voted upon at each school election not later than January 1 of each odd-numbered year. K.S.A. 25-2017a. On or before January 15, the county election officer shall publish a notice of election one time in a newspaper having general circulation in the school district (K.S.A. 25-2018), and candidates wishing to file for open positions must meet the filing deadline set forth in K.S.A. 25-2007(c).

In the case at hand, the clerk of the board of education failed to certify the upcoming vacancy of position #7 to the county election officer by January 1. Therefore, no notice of election was published and no candidates filed for this seat by the statutory deadline. Accordingly, the opportunity for a successor to be elected to fill position #7 through the aforementioned procedure is no longer a feasible alternative. Furthermore, no legislative provision exists which would allow for the calling of a special election to fill a vacancy which by law is to be filled at the regular school election, but which is not so filled due to the failure of the clerk of the school board to certify the position.

Another possible procedure for filling the vacancy is under K.S.A. 25-2022, which gives a board of education the power to fill by appointment any vacancy which occurs on the board. However, the statute specifically provides that such appointee shall serve "for the unexpired term." In our opinion, this provision prevents K.S.A. 25-2022 from being applied to the case at hand, as the successor to the incumbent shall, under K.S.A. 25-2023, "serve for a full term of four (4) years." (Emphasis added).

In our opinion, the legislature granted boards of education appointment powers only for the express purpose of replacing an incumbent who is unable to serve out his full term in office. Should a school board have the power to appoint following its own error in failing to certify a vacancy, the opportunity would be too great for the board to thwart the will of the people by simply failing to certify a vacancy until after the filing deadline has passed.

Taking into consideration the previously mentioned statutory limitations on the filling of vacancies in school district elections, we believe two options exist by which the upcoming vacancy on the school board of U.S.D. #461 may be filled. First, K.S.A. 25-2021(e) allows for write-in candidates in general school elections. The subsection provides in part:

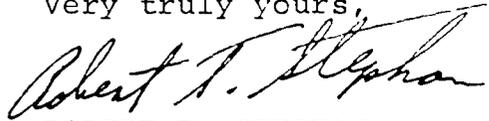
"On the ballots in general school elections, blank lines for the name of write-in candidates shall be printed at the end of the list of candidates for each different office equal to the number to be elected thereto."

Therefore, persons wishing to run for position #7 may conduct a write-in campaign during the general election for school board members. The general school election ballot should indicate that position #7 is vacant. Although no candidates names will be printed on the ballot for this position, a blank line for write-in candidates for position #7 should be printed on the ballot. If no write-in campaign is conducted for this position, it is our opinion that the incumbent will automatically hold over his position for another four-year term, as he or she is required to hold office under K.S.A. 25-2023 "until a successor is elected or appointed and qualified."

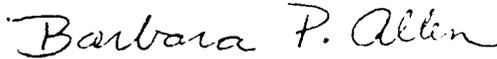
In summary, K.S.A. 25-2023 provides that a member of a board of education of a unified school district shall hold office

until a successor is elected or appointed and qualified. If the clerk of the board of education fails to certify an upcoming vacancy in the school board, candidates are prevented from being elected to that position through standard election procedures. A board of education does not have appointment powers following its own error in failing to certify a vacancy. Therefore, the vacancy may be filled either by an individual who conducts a write-in campaign in the general election, or, if no person conducts such a campaign, the incumbent shall automatically hold over in office for another full four year term.

Very truly yours,



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