

MUNICIPAL ELECTIONS: Vacancy in office of Assessor of Warrensburg,
Missouri.

6748 RS Mo 1124

September 23, 1933.



Hon. Leslie F. Hutchens, Mayor,
Warrensburg, Missouri.

Dear Sir:

This department acknowledges receipt of your letter of August 29, 1933 wherein you request an opinion as to the office of City Assessor of Warrensburg. We quote your letter as follows:

"I am asking your opinion as to whether I am compelled to have a special election or not, after the work is of said office has been completed.

Our City Assessor died recently: In fact he was sick when elected, he was never able to do his work; he appointed a Deputy, and the Council approved the appointment; now the work is almost completed, almost ninety eight per cent of it is done, and after that is done there will be nothing for the Assessor to do until next spring.

It will cost close to \$300.00 to hold an election and at the suggestion of Judge Bradley I am asking you this opinion. My City Attorney is out of town and could not render his opinion to me. I would be very grateful to you if you could enlighten me on the matter."

Warrensburg is a city of the third class, and the manner of election of officers is governed by Sec. 6721 R.S. Mo. 1929, which is as follows:

"A general election for the elective officers of each city of the third class shall be held on the first Tuesday in April after the organization of such city under the provisions of this article, and every two years thereafter, and all city elections

shall be held under the provisions of the general election laws of the state: Provided, that all certificates of nomination and petitions therefor, as provided by the state election laws, shall be filed with the city clerk and not with any other officer, and all duties specified to be performed by the constable or sheriff in the state election laws shall be performed by the marshall in city elections; and all tickets for city elections shall be printed by the city and at the city's expense; and all duties heretofore performed by the county clerk with reference to city elections shall be performed by the city clerk. The polling places for all elections in such cities, and the judges therefor, shall be selected and specified by the respective city councils of such cities by resolution, ordinance or otherwise. The manner of making returns of such elections shall be prescribed by ordinance. Any city organizing under the provisions of this article may elect a mayor and such other officers as may be necessary to carry this article into effect, who shall hold office until the second Tuesday in April thereafter, and until their successors are elected and qualified."

The following officers are designated as elective officers under Sec. 6723, R.S. Mo. 1929, said section reading as follows:

"The following officers shall be elected by the qualified voters of the city, and shall hold their offices for two years, and until their successors are duly elected and qualified, to-wit: A mayor, marshall, attorney, police judge, assessor, collector, and treasurer. The attorney shall be a person learned in the law."

You now have a vacancy, caused by a death in the office of City Assessor. It is therefore necessary to consider Sec. 6748, R.S. Mo. 1929, which is as follows:

"If a vacancy occur in any elective office, the mayor, or the person exercising the office of mayor, shall cause a special election to be held to fill such vacancy

giving ten days' notice thereof by proclamation published in some newspaper published in the city: Provided, however, when any such vacancy occurs within six months of a general municipal election, no election shall be called to fill such vacancy, but the same shall be filled by the mayor or the person exercising the office of mayor by appointment: Provided further, that any vacancy in the office of councilman which may occur within said six months shall be filled by election, in such manner as may be provided by ordinance. If a vacancy occur in any office not elective, the mayor shall appoint a suitable person to discharge the duties of the same until the first regular meeting of the council thereafter, at which time such vacancy shall be permanently filled."

Under the provisions of Sec. 6721, supra, the elective officers, which include the office of Assessor, are to be elected every two years on the first Tuesday in April. We therefore assume that your next election will be in April 1934, but under the provisions of Sec. 6748, supra, we find that if the vacancy occurs within six months of the general municipal election, the Mayor has the power to fill the same by appointment. At the present time the vacancy in question exists just a few days more than six months. By a strict interpretation of the section, you would be compelled to call a special election. However, bearing in mind the cost of such an election, as mentioned in your letter (and you state you desire to avoid the same), we make the suggestion to you, since within a few days you would have the power to make the appointment yourself, that you await the elapse of the proper number of days, then be in a position to fill the appointment without a special election.

If we are incorrect in assuming that your next general municipal election will be held in April 1934, it is the opinion of this department that you would be compelled to cause a special election to be held to fill the vacancy.

Very truly yours,

OLLIVER W. NOLEN,
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK,
Attorney General