

CITIES) Cities of fourth class shall fill vacancy in
SPECIAL ELECTIONS) elective offices by special election, by giving
at least 10 days' notice thereof by publication
in some newspaper published in city, or at
least 20 handbills ~~xxx~~ posted up at as many
public places within city.

August 22, 1936
8-24



Honorable John Protiva
Acting Mayor
Willow Springs, Missouri

Dear Sir:

This will acknowledge receipt of your request of August 18, 1936 for an opinion, which request reads as follows:

"An emergency has arisen in our city affairs due to the death of our Mayor, Dr. Chas. Palenske. I am unable to find any ordinance covering a special election to fill a vacancy due to death. Will appreciate it very much if you will let me know the proper procedure under the State Statutes to fill this vacancy. I am acting mayor by virtue of orders from the late Dr. Palenske, who appointed me as such when he left for his vacation, and since Dr. Palenske died before he returned to this city I am still acting in the capacity as mayor."

We note from your above request that you have been unable to find any ordinance covering a special election to fill the vacancy, and in that respect your attention is directed to Section 7289, R. S. Mo. 1929 relating to cities passing ordinances in conformity with the State law upon the same subject.

"Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or

authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject."

In the case of State ex rel. Brown v. McMillan, 108 Mo., l.c.161, the Supreme Court, in discussing what is now the above quoted section of our law, said:

" ** the power of the legislature to regulate elections, and to amend the laws pertaining thereto in nowise infringes any property or vested right of the said city, and the inhabitants of that city are as much bound to obey a general law of this character as any other portion of the state, and besides that section 1902 expressly provides that 'any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to, and in conformity with, the state law upon the same subject.' This section by force of law is a part of its charter * * "

Thus it may be seen that even though your city has passed no ordinance relating to the filling of vacancies by special election, that Section 7289, supra, is by force of the law, a part of its charter.

Your city, being one of the fourth class and subject to the general law respecting cities of the fourth class, your attention is further directed to Section 6973, R. S. Mo. 1929, which provides for special elections. It provides in part as follows:

"If a vacancy occur in any elective office, the mayor or the person exercising the duties of the mayor shall cause a special

election to be held to fill such vacancy, giving at least ten days' notice thereof by publication in some newspaper published in the city, or at least twenty handbills posted up at as many public places within the city: Provided, that 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 duties of the mayor by appointment."

It is evident from the above section that should a vacancy occur in any elective office, the mayor, or the person exercising the duties of mayor, shall cause a special election to be held to fill such vacancy. Ten days' notice of such special election shall be by publication in some newspaper published in the city or at least twenty handbills shall be posted up at as many public places within the city. In the event a vacancy occurs within six months of a general municipal election, no special election shall be had to fill such vacancy, but the person so exercising the duties of the office vacant shall continue in such office until the general municipal election.

CONCLUSION

It is the opinion of this department that a special election may be had to fill a vacancy in the office of mayor of your city by giving at least ten days' notice thereof by publication in some newspaper published in the city, or at least twenty handbills posted up at as many public places within the city.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General