

ELECTIONS:

Candidates for unexpired terms should declare and file for the particular unexpired term to which they aspire to be elected.

May 3, 1938

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Board of Election Commissioners,  
City of St. Louis,  
208 South Twelfth Blvd.,  
St. Louis, Missouri.

Gentlemen:

This is in reply to yours of April 26, 1938, requesting an official opinion from this department based on the following letter:

"In the declarations to be filed by candidates for the offices for Judges of the Circuit Court for the Eighth Judicial Circuit, now held by Judges Coleman and Anderson serving the unexpired terms of former Judges McAfee and Douglas, the terms of each of said offices to be voted on at the Primary Election, August 2, 1938, run to the first Monday of January, 1941.

Should each written declaration and filing state the names to be printed on the official ballots (a) for the unexpired term ending the first Monday in January, 1941, vice Judges J. Wesley McAfee, resigned; (b) for the unexpired term ending the first Monday in January, 1941, vice James M. Douglas, resigned; or (c) should the names of all candidates who file for the two unexpired terms ending the first Monday in January, 1941, be so listed on the official ballots under captions 'Vote for Two'?

The Board would appreciate your prompt advice."

May 3, 1938

Section 32 of article VI of the Constitution of Missouri provides as follows:

"In case the office of judge of any court of record become vacant by death, resignation, removal, failure to qualify, or otherwise, such vacancy shall be filled in the manner provided by law."

Your request indicates that on the account of the resignations of Judges McAfee and Douglas, there will be two vacancies in the offices of circuit judges in the City of St. Louis to be filled at the next general election. In this particular case the unexpired terms for which the vacancies are to be filled are the same, however, we do not think this would alter the rule as to filing for the unexpired term where a vacancy occurs. Section 10216, R.S. Mo. 1929, provides as follows:

"Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any state or county office originally filled by election by the people, other than the office of lieutenant-governor, state senator, representative, sheriff or coroner, such vacancy shall be filled by appointment by the governor; and the person so appointed shall, after having duly qualified and entered upon the discharge of his duties under such appointment, continue in such office until the first Monday in January next following the first ensuing general election--at which said general election a person shall be elected to fill the unexpired portion of such term, or for the ensuing regular term, as the case may be, and shall enter upon the discharge of the duties of such office the first Monday in January next following said election:" \* \* \* \* \*

Board of Election  
Commissioners

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This section provides that in case of a vacancy in office, a person shall be elected at the next general election after such vacancy occurs to fill the unexpired portion of the term for which such vacancy exists.

We fail to find where a question like the one you have submitted has been passed on by the courts, but applying the language of the statutes in its ordinary meaning, we think the names of candidates to fill each vacancy should be filed separately; that is, the candidate should only declare and file for the unexpired term of either Judge McAfee or Judge Douglas.

#### CONCLUSION

Therefore, this office is of the opinion that each candidate in his declaration and filing for the unexpired term of circuit judge should state and it should be so written on the ballot that he is a candidate for the unexpired term ending on the \_\_\_\_\_ day of \_\_\_\_\_ of which- ever judge he seeks to succeed; and that the names of all candidates who file for the two unexpired terms ending the first Monday in January, 1941, should not be listed on the official ballots under caption "Vote for Two".

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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