

TOWNSHIP TRUSTEES: Vacancy filled by county court; construction of "ten days" time in which to qualify.

6/10

May 19, 1939



Mr. Donald B. Dawson  
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Dear Mr. Dawson:

We have your request for an opinion, which in substance raises two questions:

(1) Does the failure of a township trustee duly elected at a township election to qualify for his office within ten days after he has been notified of his election create a vacancy in that office, which would authorize the county court to appoint a man to file the vacancy.

(2) Does the statute pertaining to ten days notice of election impose upon the clerk a directory or mandatory duty, and if the township clerk fails to notify an official of his election within the ten days, does that prevent the official elected from being able to qualify.

With reference to the first inquiry, our answer is that the failure of the duly elected person to qualify within ten days after notice creates a vacancy. The pertinent portions of the statutes leading to this conclusion are as follows:

Section 12277 R. S. 1929:

"Every person chosen \* to the office of township trustee \* before he enters on the duties of his office and within ten days after he shall be notified of his election \* shall take and subscribe \*

such oath \* as is prescribed by law."

Section 12278 R. S. 1929 provides that:a

"such person shall, within ten days thereafter, cause such certificate, together with his acceptance of the office, to be filed in the office of the township clerk; his neglect or refusal to do so shall be deemed a refusal to serve."

Section 12285 R. S. 1929 provides:

"whenever \* any person elected \* shall fail to qualify, \* it shall be lawful for the township board to fill such vacancy \*; provided, that any vacancy in the office of \* township board shall be filled by appointment of the county court."

The county court is authorized to fill a vacancy. State ex rel vs. Olenhouse 23 S. W. (2d) 83.

It will be noted that the above statute, particularly Section 12278 creates a vacancy upon the officer's neglect or refusal to qualify.

With reference to the second proposition, the ten days notice of the clerk is merely directory insofar as the elective official is concerned. It is a mandatory duty upon the clerk to give such notice because the statute, Section 12274, provides that the clerk shall notify the elective official. The use of such term "shall" imposes a mandatory duty upon the official. State ex inf. vs. Wymore 119 S. W. (2d) 941.

The failure, however, of the clerk to notify the officer

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does not affect the officer's right to qualify after ten days subsequent to the election have elapsed. The elective official has ten days after written notice from the clerk in which to qualify. State ex rel vs. Caldwell 276 S. W. 631.

CONCLUSION

It is, therefore, the opinion of this office that the failure of a township trustee to qualify within ten days after written notice of his election is received from the clerk creates a vacancy which is to be filled by the county court; and that such official has ten days after receiving such written notice from the county clerk in which to qualify.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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FER:RT