

MUNICIPAL OFFICES: The manner of filling unexpired term for  
ELECTIONS: the office of alderman in a city of the  
fourth class.

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March 14, 1941.

Honorable Edward V. Long  
Prosecuting Attorney  
Pike County  
Bowling Green, Missouri



Dear Mr. Long:

This will acknowledge receipt of your request for an official opinion under date of March 4, 1941, which reads as follows:

"Please give me a ruling on the following situation:

"Alderman A resigned as Alderman to the City of Bowling Green and the Mayor appoints another Alderman to serve until the next General City Election. At that election there is still one year of the unexpired term to serve. Please advise me whether or not Alderman A can be elected and qualify to serve as Alderman for the unexpired term.

"We will appreciate your ruling on this at your earliest convenience."

We assume for the purpose of rendering this opinion that the City of Bowling Green is a city of the fourth class. Section 7123, R. S. Mo. 1939,

provides how vacancies in elective offices shall be filled in the city of a fourth class, and reads 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: Provided further, that any vacancy in the office of alderman which may occur within said six months preceding a general municipal election shall be filled in such manner as may be prescribed by ordinance. If a vacancy occur in any office not elective, the mayor shall appoint a suitable person to discharge the duties of such office until the first regular meeting of the board of aldermen thereafter, at which time such vacancy shall be permanently filled."

The above statute provides that if a vacancy for alderman occurs within six months preceding a general municipal election, it shall be filled in such manner as prescribed by ordinance. Apparently, this vacancy occurred within six months of a general municipal election and the City of Bowling Green

has passed an ordinance authorizing the Mayor to appoint in such instances. The above section, further, provides that all other elective offices occurring within this period, prior to a general municipal election shall be filled by the Mayor, and further provides that if a vacancy of alderman does not occur within six months preceding a general municipal election, a special election shall be called.

Vol. 46, C. J., page 977, Section 127, in part, reads as follows:

"In the absence of statutes providing that, in the case of elective offices, an officer appointed to fill the vacancy shall hold until an election is held to fill the office, and except where merely the length of the term is fixed without reference to an unexpired term or to a vacancy in the term of office, it is generally held that officers, whether elected or appointed to fill a vacancy, will hold for the full period of the unexpired term, and it is frequently so provided by the constitution or by statute. \* \* \*"

In the instant case, the statutory provision limits the length of time such officers shall remain in office.

After a careful examination of the statutory provisions, pertaining to the appointment of an alderman to fill an unexpired term, we find nothing prohibiting Alderman A making an effort to be elected for the remainder of the unexpired term, if he so desires, and in the absence of any such provision disqualifying him

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he, of course, may be elected to the unexpired term. We, of course, assume that he meets all of the qualifications for an alderman as he was recently holding such office.

Respectfully submitted,

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney-General

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