

CITIES OF THE FOURTH
CLASS:
CITY TAX COLLECTORS:
VACANCIES IN OFFICE:
SPECIAL ELECTIONS:

A special election is required when a vacancy occurs in an elective office in a city of the fourth class more than six months prior to the next general municipal election in such city.



October 30, 1957

XXXXXXXX

W. H. Ritzenthaler

Honorable Stephen Lincoln
Member, House of Representatives
Harrison County
Cainsville, Missouri

Dear Mr. Lincoln:

This will acknowledge receipt of your opinion request of October 8, 1957, which reads as follows:

"Mrs. Emma Glaze of Cainsville was elected City Tax Collector at our last spring election and she has decided she does not want the office. She will not resign, however, if it costs the city a special election in order to elect her successor. The City Council and Mayor would like to appoint our Township Tax Collector to the office but our Prosecuting Attorney has advised the Mayor that he believes a special election will be necessary. I will thank you to advise me at your earliest convenience if the Mayor and Council have the power of appointment or if a special election is necessary.

"You gave me an opinion sometime back that one could hold both offices - Township Tax Collector and City Tax Collector - as there is no conflict of interest.

"No politics is involved in election to these city offices in our small town.

"It is a convenience to our tax payers to pay their taxes at one office."

Honorable Stephen Lincoln

The City of Cainsville, Missouri has a population of 618 inhabitants and is one of the fourth class. Research Memorandum No. 5, Committee on Legislative Research, Missouri General Assembly, Revised March 1, 1952.

With respect to cities of the fourth class, it is provided, generally, in Section 79.030, RSMo 1949, that there shall be a general election of elective officers of such cities every two years. It is stated in the opinion request that the city tax collector was elected at "our last spring election." It is, therefore, assumed that the collector was elected in April of 1957 and that, consequently, the term will expire two years later (Section 79.050, RSMo 1949), in April of 1959.

We believe that the law relating to the question in the opinion request is quite clearly set forth in Section 79.280, RSMo 1949. This section reads 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;
* * *." (Emphasis supplied)

Although there are no cases construing this section in the light of the question raised in the opinion request, as aforementioned, we believe that the provisions of said section are quite clear in meaning. In examining this section, it is noted that when a vacancy occurs in any elective office, there shall be a special election with the proviso that when the vacancy occurs within six months of a general municipal election, no election shall be held to fill such vacancy. Since a vacancy created by a resignation at the present time would occur more than six months prior to the next general municipal election, it is quite clear that a special election would be required.

Honorable Stephen Lincoln

It is concluded that a special election is required when a vacancy occurs in an elective office in a city of the fourth class more than six months prior to the next general municipal election of such city.

CONCLUSION

It is, therefore, the opinion of this office that if the tax collector of the City of Cainsville, Missouri, a city of the fourth class, resigns at anytime more than six months before the next general municipal election in said city, a special election must be held for the purpose of electing a successor to such office.

The foregoing, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Very truly yours,

John M. Dalton
Attorney General

HLH:hw