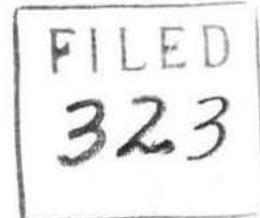


OFFICERS: Appointed probate judge serves until the next  
COUNTY OFFICERS: general election at which a successor is  
ELECTIONS: elected.  
PROBATE JUDGE:  
VACANCIES:

Opinion No. 323

October 13, 1964



Honorable James G. Lauderdale  
Prosecuting Attorney  
Lafayette County  
Lexington, Missouri

Dear Mr. Lauderdale:

This is in answer to your recent request for an official opinion of this office as to whether the person elected to the unexpired term as Probate Judge and Ex-officio Magistrate Judge of Lafayette County takes "office immediately upon being certified and after receiving his commission from the governor or does he wait until the first day of January, 1965?"

Section 105.030, RSMo 1959, is a general statute providing for the filling of vacancies in certain state and county offices and reads as follows:

"Whenever any vacancy, caused in any manner or by any means whatsoever, occurs or exists in any state or county office originally filled by election of the people, other than in the offices of lieutenant governor, state senator or representative, or sheriff, the vacancy shall be filled by appointment by the governor; and the person appointed after duly qualifying and entering upon the discharge of his duties under the appointment, shall continue in office until the first Monday in January next following the first ensuing general election, at which general election a person shall be elected to fill the unexpired portion of the term, or for the ensuing regular term, as the case may be, and the person so elected shall enter upon the discharge of the duties of the office the first Monday in January next

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following his election, except that when the term to be filled begins on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold the office until such other date. This section shall not apply to vacancies in county offices in any county which has adopted a charter for its own government under section 18, article VI of the constitution."

Section 481.120, RSMo 1959, is a special statute dealing with vacancies in the office of judge of probate. Said section reads as follows:

"When a vacancy shall occur in the office of judge of probate, it shall be the duty of the clerk of the circuit court to certify the fact to the governor, who shall fill such vacancy by appointing some eligible person to said office, who, when qualified, shall continue in office until the next general election, when a successor shall be elected for the unexpired term."

It is noted that under Section 105.030 above, a person appointed by the governor to fill an office therein provided continues in such office until the first Monday in January next following the first ensuing general election--at which such 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 that Section 481.120 contains no such provision and of course, herein the difficulty arises.

It is a general rule of statutory construction that where general statutes and a special statute relating to the same subject matter, the special statute will prevail as far as the particular subject matter comes within its provisions. State ex rel. v. Smith, 334 Mo. 653, 67 S.W. (2d) 50.

Following this rule of construction, we believe that Section 481.120, relating to the office of judge of probate would prevail over Section 105.030, relating to numerous offices insofar as the office of judge of probate is concerned.

In the case of State ex rel. Asotsky v. Hicks, 142 S.W.(2d) 472, 473, the Supreme Court of Missouri found occasion to examine a statutory provision substantially like Section 481.120 in regard to a similar question as the one you have presented, and in its opinion the Court said:

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"This section presents no ambiguity. Under the section, an appointee to a vacancy in the office of justice of the peace holds only until the next general election of county officers."

Following the interpretation of the Hicks case, we are of the opinion that a person appointed to fill a vacancy in the office of judge of probate holds such office only until the next general election at which a successor is elected.

Conclusion

Therefore, it is the opinion of this office that where a vacancy occurs in the office of judge of probate, and such office is filled by the appointment of the governor, as provided in Section 481.120, RSMo 1959, such appointee holds said office until the next general election at which a successor is elected.

The foregoing opinion, which I hereby approve was prepared by my Assistant, Thomas E. Eichhorst.

Very truly yours,



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THOMAS F. EAGLETON  
Attorney General