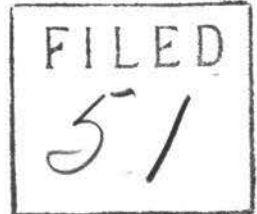


TOWNSHIP COLLECTORS:
TOWNSHIP BOARD:

Township board and not
county court is authorized
to fill vacancies in
office of township
collector.

December 7, 1943

12/9



Mr. Yewell Lawrence
Clerk of the County Court
Bloomfield, Missouri

Dear Sir:

This will acknowledge receipt of your letter of
December 3, 1943 presenting for our opinion the
following:

"I am writing you in regard to who has
the right to appoint a Township Clerk
in Township Organization counties when
one resigns or moves out of the Town-
ship before his term expires."

Section 13962, R. S. Mo. 1939 provides:

"Whenever any township shall fail to
elect the proper number of officers
to which such township may be entitled,
or when any person elected or appointed
shall fail to qualify, or when any
vacancy shall happen in any township
office from any cause, it shall be law-
ful for the township board to fill such
vacancy by appointment, and the person
so appointed shall hold the office and
discharge all the duties of the same
during such unexpired term, and until
his successor is elected or appointed
and qualified, and shall be subject to
the same penalties as if they had been
duly elected: Provided, that any
vacancy in the office of justice of the
peace or in the township board shall be
filled by appointment of the county court."
(Underscoring added).

Briefly this section provides that the township board is authorized to fill all vacancies that occur in township offices except vacancies in the office of justice of the peace and in the township board. Vacancies in the latter two offices are filled by the county court only.

The supreme court in the case of State ex. rel. Kent v. Olenhouse, 23 S. W. (2d) 83 ruled that a vacancy in the office of township trustee and ex officio treasurer was filled by the appointment of the county court and states, l. c. 85:

"* * * By the express terms of this section, it is clear that authority to fill a vacancy in the township board and in the office of justice of the peace is vested in the county court, while authority to fill vacancies in all other township offices is lodged with the township board."

And again in the above case, at l.c. 86, the court said:

"* * * By express terms of the statute, the township trustee is made a member of the board of directors; therefore, a vacancy in the office of township trustee creates a vacancy in the board of directors. * * *"

Section 13976, R. S. Mo., 1939, designates the township trustee and members of the township board a board of directors. Section 13945 provides for the election of "* * * two members of the board, * * *". The terms "township board" and "board of directors" are synonymous. State ex. rel. Kent v. Olenhouse, 23 S.W. (2d) l. c. 86.

As the township collector is not a member of the township board and performs none of the functions of that body, his office is not within the exception contained in Section 13962 which only authorizes the county court to fill vacancies occurring in the offices of justices of the peace and members of the township board. As a result a vacancy in the office of township collector is governed by the general provisions of the statute and is filled by an appointment made by the township board.

Mr. Yewell Lawrence

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12-7-43

CONCLUSION

Therefore it is the opinion of this office that when a vacancy occurs in the office of township collector, the township board and not the county court has the authority to fill such vacancy by appointment.

Respectfully submitted,

VANE C. THURLO
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

VCT.sc