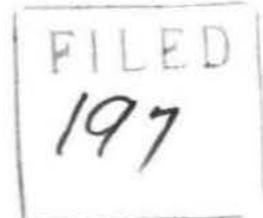


TOWNSHIPS: 1. A vacancy in the office of township trustee
OFFICERS: being also a vacancy in the board of directors
 of the township, is to be filled by the county
court. Both the township clerk and the county clerk have authority
to administer the oath of office to the newly appointed township
trustee. 2. A vacancy in the office of township assessor is to be
filled by action of the township board. The oath of office of such
assessor may be administered by any officer having authority to ad-
minister oaths, other than the township clerk who is ex officio the
township assessor.

April 15, 1970

OPINION NO. 197

Honorable Carl D. Gum
Prosecuting Attorney
Cass County Court House
Harrisonville, Missouri 64701



Dear Mr. Gum:

This official opinion is issued in response to the request contained in your letter relative to the filling of vacancies in township offices and boards of directors. The questions raised by your letter are as follows:

"1. When the trustee of the township board dies, do the remaining township board members fill the vacancy or does the county court? Who swears in the newly appointed trustee, the township clerk or the county clerk?

"2. When the township assessor resigns, who appoints the successor assessor, the township board or the county court? Who swears in the newly appointed assessor?"

The pertinent provisions of the Missouri statutes are as follows:

Section 65.110, RSMo 1959.

"Officers to be chosen.--There shall be chosen at the biennial election in each township one trustee, * * * one township clerk, who shall

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be ex officio township assessor, and two members of the township board."

Section 65.160, RSMo 1959.

"Oath--shall assume office, when.--Every person chosen or appointed to the office of township trustee and ex officio treasurer, member of the township board, * * * or township clerk, and ex officio township assessor, before he enters on the duties of his office and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before any officer authorized to administer oaths, such oath or affirmation as is prescribed by law; * * * "

Section 65.200, RSMo 1959.

"Vacancies in office--how filled.--* * * when any vacancy shall happen in any township office from any cause, it shall be lawful 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, * * * provided, that any vacancy in the township board shall be filled by appointment of the county court."

Section 65.290, RSMo 1959.

"Board of directors--Duties.--In each township in this state, organized under the provisions of this chapter, there shall be a board of directors, composed of the township trustee and members of the township board, * * * "

By the express terms of Section 65.200, it is clear that authority to fill a vacancy in the township board is in the county court while authority to fill vacancies in all other township offices is lodged with the township board. The township trustee is a member of the township board of directors. Section 65.290. Accordingly, a vacancy in the office of trustee would also be a vacancy in the township board which should be filled by the county court. See State v. Olenhouse, 23 S.W.2d 83 (Mo.Sup.1929).

Section 65.160 states that the township trustee and the township collector and ex officio township assessor shall take and subscribe to an oath before he enters on the duties of his office. This oath is to be taken and subscribed before any officer authorized to

Honorable Carl D. Gum

administer oaths. Both the county clerk and the township clerk are officers authorized to administer oaths; therefore, either may legally administer the oath of office to the township trustee. Inasmuch as the township clerk also serves as ex officio township assessor, the oath of office to be taken by the assessor should be administered by some authorized officer other than the township clerk. Under the provisions of the statute any officer authorized to administer oaths may perform this function.

CONCLUSION

Therefore, it is the opinion of this office that:

1. A vacancy in the office of township trustee being also a vacancy in the board of directors of the township, is to be filled by the county court. Both the township clerk and the county clerk have authority to administer the oath of office to the newly appointed township trustee.
2. A vacancy in the office of township assessor is to be filled by action of the township board. The oath of office of such assessor may be administered by any officer having authority to administer oaths, other than the township clerk who is ex officio the township assessor.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John E. Park.

Very truly yours,



JOHN C. DANFORTH
Attorney General