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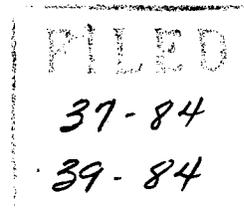
DIRECT DIAL:

OPINION LETTER NOS. 37-84 and 39-84

The Honorable Harriett Woods
Senator, District 13
State Capitol Building, Room 329
Jefferson City, Missouri 65101

and

The Honorable E. J. Cantrell
Representative, District 82
State Capitol Building, Room 300
Jefferson City, Missouri 65101



Dear Senator Woods and Representative Cantrell:

This is in response to your requests for opinions, numbered 39-84 and 37-84, respectively.

Opinion request number 39-84 (Woods) asks:

A portion of section 79.280, RSMo Supp. 1982, deals with filling a vacancy in the office of alderman in fourth class cities in St. Louis County. If the vacancy occurs "within six months of a municipal election," it is filled in the manner prescribed by ordinance. If it does not occur within six months of a municipal election, a special election is to be held to fill the vacancy.

My question is as follows:

If such an aldermanic vacancy occurs, to the date, exactly six months prior to a municipal election, is the vacancy filled by a special election or is it filled as prescribed by local ordinance?

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Opinion request number 37-84 (Cantrell) asks:

May a Fourth Class City in the County of St. Louis provide by ordinance to fill a vacancy on its board of aldermen by special election when the vacancy occurs within six months of a regular election (see Section 79.280 RSMo).

These opinion requests indicate that an alderman of Venita Park, Missouri, a fourth-class city located in St. Louis County, was elected to a two-year term of office, beginning in April, 1983, and ending in April, 1985. This alderman died on October 3, 1983. You also inform us that the terms of the Board of Aldermen of Venita Park are staggered pursuant to Section 79.060, RSMo 1978.¹ Therefore, some of the members of the Board of Aldermen of Venita Park will be up for election on April 3, 1984, the next municipal election day. See Section 115.121.3, RSMo 1978.

In Opinion No. 24, Schechter, 1965, copy enclosed, an alderman of the City of Overland was elected to office in April, 1964, for a term of two years. This alderman died on October 7, 1964. The terms of the members of the Board of Aldermen of Overland Park had staggered terms. The next municipal election at which members of the board of aldermen were elected was April 6, 1965.

Relying on City of Kirkwood v. Allen, 138 Mo. App. 478 (1909), this office concluded in Opinion No. 24, supra, that the "municipal election" to which Section 79.280 refers is the next general municipal election, despite the fact that there was approximately one and one-half years left to the unexpired term of the office vacated. Thus, pursuant to Opinion No. 24, supra, the vacancy in the Board of Aldermen must be filled at the next general election.

Following our 1965 opinion, the remaining issue for resolution in this opinion is whether the vacancy occurring on October 3, 1983, occurred within six months of the next general municipal election, which is to occur on April 3, 1984. Our answer will provide direction as to how the city must fill the vacancy--either by special election or by ordinance--until the people select an alderman at the next general municipal election.

¹There appears to be a conflict between Section 79.030, RSMo 1978, which authorizes municipal elections for all elective officers every two years, and Section 79.060, RSMo 1978, which appears to authorize staggered terms for members of the board of aldermen and annual elections for aldermen. For purposes of this opinion, we assume that Section 79.060, RSMo 1978, being the more specific statute, governs over Section 79.030, RSMo 1978.

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Section 1.020.1(6), RSMo 1978, states:

1. As used in the statutory laws of this state, unless otherwise specially provided or unless plainly repugnant to the intent of the legislature or to the context thereof:

. . .

(6) "Month" and "year". "Month" means a calendar month, . . .; [Emphasis in original.]

Section 1.040, RSMo 1978, states:

The time within which an act is to be done shall be computed by excluding the first day and including the last. If the last day is Sunday it shall be excluded.²

In re Lynch's Estate, 254 P.2d 454, 454-455 (Utah 1953), states:

One month is a calendar month
Such a month commences at the beginning of the day of the month on which it starts and ends at the expiration of the day before the same day of the next month. Thus a month which starts with the beginning of the first day of a calendar month would end at the end of the last day of such month, and not at the last end of the first day of the next month. If the month in question commenced on a day other than the first day of such month, such as at the beginning of the 23rd day of such month, it would end at the expiration of the 22nd day of the next month and not at the expiration of the 23rd day of the next month, which would be the beginning of another month. In the present case we exclude from our calculation the day of the act or event after

²The last sentence of Section 1.040, RSMo 1978, should be compared with Rule 44.01, which excludes the last day if it is a Saturday, Sunday or a legal holiday. Section 9.010, RSMo 1978, declares any general primary election day and any general state election day to be legal holidays. Primary election days occur in August, general election days occur in November, while municipal election days occur in April. Section 115.121, RSMo 1978. Therefore, municipal election days are not legal holidays.

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which the designated period of time begins to run, which is November 22, the day on which the motion was overruled, and start counting from the beginning of the 23rd day of that month; from that time one month would end at the expiration of the 22nd day of December, or just before the 23rd commenced, which marked the beginning of another month.

See also Needham v. Moore, 292 S.W.2d 720 (Tenn. 1956).

Applying these rules to the instant factual situation, we exclude October 3, 1983, as the first day. Section 1.040, RSMo 1978. A six-calendar-month period beginning on October 4, 1983, ends April 3, 1984, which is the next general municipal election day. Accordingly, because October 3, 1983, is not counted, this vacancy occurred within a six month period of a municipal election. The vacancy in the office of alderman, which you describe, should be filled in the manner prescribed by ordinance until the people choose an alderman to fill the vacancy at the municipal election. Section 79.280, RSMo Supp. 1983.

Yours very truly,



JOHN ASHCROFT
Attorney General

Enclosure