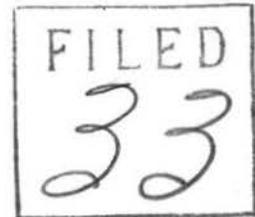


OFFICERS )  
          ) The County Court and not the Township Board  
TOWNSHIP TRUSTEES) is authorized to fill vacancy in office of  
                  ) Township Trustee.

November 9, 1943



Honorable William E. Gladstone  
County Clerk  
Gentry County  
Albany, Missouri

Dear Sir:

This will acknowledge receipt of your letter of November 5, 1943, presenting for our opinion the following:

The office of Trustee of Cooper Township was made vacant by the death of Mr. J. L. Grantham, the Trustee. The Township Board appointed a person to fill that vacancy and on the same day, namely; November 4, 1943, the County Court likewise made an appointment to fill such vacancy. The person appointed by the Township Board is now serving as Trustee, and you ask who is entitled to such office, the person appointed by the Township Board or the person appointed by the County Court.

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 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, 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."

(Underscorings added.)

This section was formerly section 13198, R. S. Mo. 1919.

The exact question was passed upon by the Supreme Court of our State in the case of State ex rel. Kent vs. Olenhouse, 23 S. W.. (2d) 83. The facts there were about as follows:

One E. M. Conway was elected Trustee of Chillicothe Township, Livingston County, in the Township election. He duly qualified as such and entered upon the discharge of his official duties and then died. The County Court of Livingston County appointed one Winans as Township Trustee to fill the vacancy. Winans tendered his bond to the Township Board. The two surviving members could not agree; one contended that Winans was duly appointed and entitled to the office and the other member contended that the Board and not the County Court had the right to appoint the Trustee. A taxpayer of the Township then filed a mandamus action to compel the two members of the Township Board to fill the vacancy in the office of Trustee by appointing a successor to Conway, and to organize the Township Board by the election of a president.

In denying the relief sought the Supreme Court held: (23 S. W. (2d) 1.c. 86:

"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 13198 of the statute heretofore quoted vests authority in the county court to fill vacancies in the township board. As the township board is, in fact, the board of directors, it logically follows that the county court and not the township board is authorized to fill the vacancy

in the board of directors caused by the death of M. E. Conway."

It was ruled: (l.c. 86-87.)

"We will suggest in passing that it appears from the pleadings that the county court appointed and commissioned one Joseph F. Winans to fill the vacancy in the office of trustee and member of the board of directors, and that he duly qualified as such by taking the oath of office and tendering a sufficient bond as required by statute. If these facts are true, Winans bond should be approved, he should be recognized and accepted as trustee and a member of the board of directors, and the board should elect a president and proceed to transact the business of the township; but we are powerless to compel such action in this proceeding for reasons already stated, and for the further reason that the pleadings do not ask for such relief.\* \* \*"

#### CONCLUSION

Therefore, it is the opinion of this office that when a vacancy occurs in the office of Township Trustee, and Ex Officio Treasurer, the County Court and not the Township Board, has the authority to fill such vacancy by appointment.

Respectfully submitted,

Vane C. Thurlo  
Assistant Attorney-General

VCT:ir