

ELECTIONS: Vacancy in Congress filled by special
CONGRESSMEN: election called by Governor.

February 5, 1951

Honorable Forrest Smith
Governor of Missouri
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"A vacancy now exists in the membership of Congress from the Eleventh District of Missouri.

"Will you please render your opinion of the proper procedure under the law for filling this vacancy?"

The Constitution of the United States provides for the filling of vacancies in the representation from any state. Article 1, Section 2, Clause 4 of the Constitution, reads as follows:

"When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies."

While the 17th Amendment to the Constitution provides that the Legislature of any state may empower the Executive thereof to make temporary appointments when a vacancy occurs in the representation of any state in the Senate, such power of temporary appointment does not exist when a vacancy occurs in the House of Representatives.

Section 111.210, R.S. Mo. 1949, provides as follows:

"When the governor issues a writ of election to fill any vacancy, he shall mention in said writ how many days, to be not less than ten, the sheriff shall give notice thereof."

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In the case of Bottomly vs. Ford, 157 P. (2d) 108, the Supreme Court of Montana said, l.c. 110:

" * * * Section 532, Revised Codes, provides: 'Special elections are such as are held to supply vacancies in any office, and are held at such times as may be designated by the proper officer or authority.'

"Upon adoption of that statute in 1895 the United States Constitution provided, and still provides, Art. I, section 2; 'When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies,' Section 532 therefore authorizes the special election in question and the fixing of the time thereof by the Governor. * * *"

In view of the above authorities it will be seen that, when a vacancy occurs in the House of Representatives of the United States Congress, the Governor must call a special election, and in the writ of election he must specify the number of days of notice that must be given by the sheriff.

CONCLUSION

It is therefore the opinion of this department that, when a vacancy exists in the representation from any state in the House of Representatives of the United States Congress, such vacancy is filled by a special election which is called by the Governor of the state.

Respectfully submitted,

ARTHUR M. O'KEEFE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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