

Opinion No. 12-872

March 12, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. T. J. Mabry, State Senate, Santa Fe, New Mexico.

CITY COUNCIL.

Method of filling vacancies in a City Council and terms of office of aldermen.

OPINION

{*16} In response to your request for my opinion as to the tenure of office of members of a city council who have been appointed to fill vacancies in the council, I take pleasure in giving you the result of my examination of the statutes.

The authority to fill such vacancies by appointment of the council, is to be found in the eighty-seventh sub-division of Section 2402 of the Compiled Laws of 1897, which provides that the person appointed to fill a vacancy is "to hold his office until the election and qualification of his successor at the next succeeding annual election for municipal officers." This provision was originally adopted as Section 3 of Chapter 46 of the Laws of 1893, and so far as it conflicts with that portion of Section 2465, which provides for the filling of such vacancies by special election, repeals the latter section, as that was a part of the original act of 1884.

At the time of the passage of the act of 1893, elections were held annually in cities, and one-half of the members of the city council were elected at each election to serve for a term of two years.

By Chapter 9 of the Laws of 1903, it was provided that the term of office of aldermen should be two and four years, and that at the April election of 1904 there should be elected two aldermen from each ward, one of whom should be elected for two years and the other for four years. It appears to have been discovered during the same legislature that this was not quite complete, and by Chapter 93 it was provided that at the April election, 1906, and each two years thereafter, there should be elected one alderman from each ward, who should hold his office for the period of four years. This so changed the system that one-half of the city council should be elected once in two years, making the term of each member four years.

Under the earlier system, one-half of the council was to be elected each year, the term of office being for two years. The statute authorizing the council to make appointments to fill vacancies does not explicitly state that the appointment shall be for the remainder of the unexpired term of the previous incumbent, but declares that the person appointed shall hold his office until the election of his {*17} successor at the next succeeding

annual election. At that time, the only distinct authority for holding any election, was for the election of one member of the council from each ward, to hold office for two years. To harmonize these two statutory provisions, I believe we must hold that the statute authorizing the appointments means that the person appointed should hold office until the next succeeding election at which a successor could properly be elected in accordance with the election statute, which appears in Section 2467 of the Compiled Laws, and thus harmonize with the general purpose of having only one-half of the council go out of office at each annual election. When the system was changed so as to lengthen the term of office, by the same course of reasoning I am of opinion that the persons appointed by the council to fill vacancies, must hold office until in the regular course of elections and for the purpose of keeping up the system of a quadrennial term, a successor could be regularly elected for the former incumbent. Any different construction of the statutes would tend to derange the system prescribed by the legislature. It is a general rule that no election of public officers can be held unless distinctly authorized by law, and there is no statute authorizing the election of any member of a city council to fill out an unexpired term.

As a result of this view, you will see that at the approaching city elections there should be elected only one member of the city council from each ward to take the place of those members who were elected in 1908, whether they have served their full term, or others have been appointed in their places; and if appointments have been made to fill vacancies among the members elected in 1910, the persons appointed should hold office until 1914.