

Opinion No. 52-5545

May 27, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Lewis C. Cox, Jr. Attorney at Law Clovis, New Mexico

{*254} This is in reply to your inquiry of April 29, 1952, which you made in behalf of the Town of Texico as their attorney.

Your inquiry seeks the answer to a question raised by the ruling of the District Court on the validity of the recent Municipal election held at Texico. Since the Court ruled that the election of the two Town Council members was void and of no effect there is presented the problem of whether a vacancy now exists on the Town Board that may be filled or whether the members who held office and whose terms were expiring will remain in office for lack of a qualified successor.

The statutes in this regard are ambiguous. Section 14-1503 states in part . . . "Provided, said trustee when elector and qualified shall hold their offices for the period to which they were elected, and until their successors are duly elected and qualified."

Section 14-1605 states:

"All **vacancies occurring by death, disability or resignation** of any city council, or Board of aldermen, or {*255} Board of trustees of any incorporated city, town, or village, shall be filled by appointment by the mayor of such city, town or village, by and with the advice and consent of the city council, or board of aldermen, or board of trustees, as the case may be, the person so appointed to hold his office until the election and qualification of his successor at the next succeeding municipal election." (emphasis supplied)

You will note that in this last quoted statute the only vacancies which may be filled are those specifically occurring by reason of "death, disability or resignation."

As to the two offices in the Town of Texico, it is my opinion that there is no vacancy none having occurred by the mere failure of election. It is my opinion that the provisions of Section 14-1503 must prevail and the two members of the town council whose terms expired must hold office until their successors are duly elected and qualified.

I trust that this will fully answer your inquiry.