

**Opinion No. 14-1297**

August 14, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. A. W. Hockenhull, Clovis, New Mexico.

**VACANCY.**

Special election to fill vacancy in office of county clerk.

**OPINION**

{\*154} I have received your letter of the 10th inst. in which you state that the offices of mayor and clerk of the City of Clovis are vacant by resignation and that the council has appointed one of its members to act as mayor and has also appointed a clerk to serve until successors are duly elected and qualified, and also that the council contemplates calling a special election to elect a mayor and, if necessary, a city clerk.

I am compelled to agree with you that under Section 2465 of the Compiled Laws of 1897, a clerk should be elected for the unexpired term. That section is rather awkwardly drawn and is not as clear as it should be. The sentence which covers this matter is as follows:

"In all cases of vacancies in the city council they shall be filled by special election, and in case any office of an elective officer, except members of the city council, shall become vacant before the regular expiration of the term thereof, the vacancy shall be filled by the city council until a successor is elected and qualified, and such successor shall be elected for the unexpired term."

The statute distinctly declares, as to vacancies in the council, {\*155} that they shall be filled by special election, although this is modified by a later statute of 1893, which appears in the Compiled Laws as the 87th Subdivision of Section 2402. This has no reference, however, to other elective officers and it is clear that the legislative intent was, in case of a vacancy in such an office as that of the city clerk, a successor should be elected for the unexpired term and the only way that such a successor can be elected is by special election which must be called by the city council.