

Opinion No. 24-3788

December 15, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested December 12, 1924, by: Honorable Forrest Fielder, District Attorney, Deming, New Mexico.

A County Officer Appointed by the Board of County Commissioners Serves Until the Next Succeeding General Election.

OPINION

{*173} Your statement of facts and request for opinion are as follows:

"In the election held here two years ago, J. F. Durant was elected Probate Judge of Grant County and he held that office until he died, about the 10th of November of this year. He was re-elected in the recent election. Immediately after his death the Board of County Commissioners filled the vacancy by appointment. The question now arises as to how long this appointment will hold. Is the appointment made by the present board only good for the balance of the present term or is it good until the next General Election? It has been claimed that the newly elected board should have the right to make the appointment for the term beginning January 1st. It has also been suggested that a special election might be called to fill this vacancy."

{*174} The appointee in question is a duly qualified officer and his term of office is governed in part by the provisions of Sec. 2, Art. 20, St. Const., which reads as follows:

"Every officer, unless removed, shall hold his office until his successor has duly qualified."

Vacancies in the office of County Commissioners are filled in conformity with Sec. 4 of said Art. which reads as follows:

"If a vacancy occur in the office of * * * county commissioner, the governor shall fill such vacancy by appointment, and such appointee shall hold such office until the next general election. His successor shall be chosen at such election and shall hold his office until the expiration of the original term."

We quote the next preceding section from the Constitution to show that similar officers hold their appointments "until the next General Election."

The provision of our statute relating to vacancies in county offices reads as follows:

"Whenever any vacancy in any county or precinct office in any of the counties of this State other than a vacancy in the office of county commissioner, shall occur by reason of death, resignation or otherwise it shall be the duty of the board of county commissioners of the county where such vacancy has occurred to fill said vacancy by appointment and said appointee shall be entitled to hold said office until his successor shall be duly elected and qualified according to law." -- Sec. 1219, Code 1915.

From the foregoing it will also appear that the successor to the appointee, in such cases, must be "elected." We, therefore, think the appointee in question, may serve as Probate Judge until his successor is elected at the next General Election and has duly qualified.

We have no provision of law authorizing a special election to meet such emergencies.