

**OPINION**  
**46-43**

September 16, 1946 (OPINION)

CITIES

RE: Vacancy in Office - Special Election

This is in reply to your letter of September 7, 1946, in which you say that you have been instructed to inquire as to the correct procedure to follow to elect an alderman to replace one recently deceased. Section 40-0808 of the 1943 Revised Code provides:

"If a vacancy occurs in the office of alderman by death, resignation, or otherwise within six months prior to the next city election, the city council shall appoint a person from the ward from which the alderman previously holding was elected or appointed to fill such vacancy until the next city election, at which election the unexpired term shall be filled. If the vacancy occurs more than six months prior to the next city election, a special city election shall be held to fill such vacancy for the unexpired term."

It will, therefore, be necessary for the city council by resolution to call a special election, setting forth in such resolution that a special election will be held at the time and place therein specified for the purpose of filling the vacancy in the office of alderman caused by the death of the incumbent.

Section 40-2116 of the 1943 Revised Code provides:

"Special municipal elections to fill vacancies or for any other purpose shall be held and conducted by the inspectors and judge of election of the several precincts in the same manner and the returns shall be made in the same form and manner as at regular municipal elections."

Section 40-2103 of the 1943 Revised Code provides:

"Biennial municipal elections in cities operating under the council form of government shall be held on the first Monday in April in each even numbered year at such place or places as the city council shall designate. In cities where aldermen are elected at large, the council shall designate one polling place only. The polls shall be kept open continually from eight o'clock a.m., to seven o'clock p.m. Ten days' notice of the time and place of holding each election and of the offices to be filled thereat shall be given by the city auditor by publication in at least two newspapers published in said city if two are published therein. Publication in one such newspaper shall be sufficient if only one newspaper is published in the city."

The procedure, Mr. Anderson, for calling a special election is, therefore, the same as the procedure for calling the regular city election. In the instant case, the special election will, of course,

be confined to the ward from which the deceased alderman was elected. The notice of election should state the time and place of the election and the hours when the polls will be open.

Section 40-2107 provides that "a candidate for any public office in an incorporated city or village may be nominated by filing with the city auditor, at least twenty days prior to the holding of the election, a petition signed by not less than ten percent of the qualified electors residing within the ward or precinct in and for which such officer is to be elected, if the election is by wards,  
\* \* \*."

By following the procedure prescribed for holding a regular city election with reference to nomination of candidates, printing of the ballot, notice of election, etc., you will comply with the requirements of the statutes relating to special elections.

NELS G. JOHNSON

Attorney General