

OPINION
46-46

April 15, 1946 (OPINION)

CITIES

RE: Aldermen - Vacancies

Your letter of April 11 addressed to this office has been received and contents noted.

You state that it has been discovered that a person who was elected alderman of the city at recent election is not a citizen; that is, he has not received his final citizenship papers. The question now is whether the incumbent alderman is entitled to hold over until his successor is elected and qualified as provided by section 40-0806, or whether section 40-0808 would include the failure of an alderman-elect to qualify, and further whether section 44-0201, which defines vacancies, and among the causes listed specifies failure to qualify as provided by law, would apply.

Section 40-0806 fixes the length of the term of office of alderman. It provides, "* * * of the aldermen elected in each ward, the one receiving the greater number of votes shall serve until the third Tuesday in April following the second succeeding biennial election and the one receiving the lesser number of votes shall serve until the third Tuesday in April following the biennial election succeeding his election; if the city is not divided into wards, the one half of the aldermen elected in the entire city receiving the greater number of votes shall serve until the third Tuesday in April following the second succeeding biennial election and the one half of the aldermen elected in the entire city receiving the lesser number of votes shall serve until the second Tuesday in April following the biennial election succeeding their election. * * * the length of the terms of the aldermen elected at such election shall be determined as provided in this section."

From the provisions of said section 40-0806 it is clear that the length of the term of office of an alderman is two years. That, it seems to me, would dispose of the question as to the termination of term of office of the alderman who fails of election.

The person who was elected or who received the majority vote is not qualified; consequently, his election is void under the provisions of section 44-0201 defining vacancies. In view of the fact that the term of office of the alderman who was defeated in the election has expired, it is the opinion of this office that there is a vacancy which should be filled as provided by the statute for filling vacancies in such cases. The former alderman is no longer entitled to the office because he was a candidate and failed of election. The person who was elected is disqualified under section 44 0201 and cannot take over the office.

NELS G. JOHNSON

Attorney General