

OPINION
46-87

April 2, 1946 (OPINION)

ELECTIONS

RE: Officers - Vacancies

Your letter of April 8 has been received and contents noted. You state that in the recent election in the city of Casselton no candidates' names appeared on the ballot for the office of police magistrate and city justice of the peace, no parties having filed nominating petitions for these offices.

As a result of the voters writing in the names on the ballots, J.R. Bishop received the greatest number of votes for both offices. He has been police magistrate and desires to be elected to that office as a sticker candidate. He does not, however, wish to qualify as justice of the peace. The question you raise is whether there is a vacancy, and if so, whether the former justice of the peace holds over until his successor is elected and qualifies for that office, or whether the party receiving the second highest vote for justice of the peace would be elected to that office.

The person receiving the next highest vote, of course, was not elected. Section 40-1402 of the North Dakota Revised Code of 1943, prescribing the terms of office of city officers, provides that all elective officers in the city operating under the council form of government shall hold their respective offices for two years and until their successors are elected and qualified.

Assuming that Mr. Bishop was elected to the office of justice of the peace but he failed to qualify, then in our opinion there would be a vacancy.

Section 44-0104, referring to state, district and county offices, provides that if any person elected to any state, district, or county office shall fail to qualify and enter upon the duties of the office within the time fixed by law, such office shall be deemed vacant and shall be filled by appointment as provided by law. While this statute does not include city officers, we believe that the provisions thereof would apply to the office of justice of the peace, and if the person duly elected fails to qualify, a vacancy is created which may be filled by appointment as provided by law.

NELS G. JOHNSON

Attorney General