

OPINION  
50-24

March 6, 1950 (OPINION)

CITIES

RE: Vacancy in Aldermen

Your letter of March 4 addressed to the Attorney General has been received and referred to the undersigned for attention and reply.

You state that in your city is a vacancy in the office of alderman from the first ward by reason of death. This vacancy will be filled by appointment by the council as provided by Section 40-0808 since there will be an election within the next six months.

You refer to Section 40-0806, which among other things, provides that whenever, for any cause, more than one-half of the total number of aldermen in any ward, or more than one-half of the total number of aldermen in the city, if the city is not divided into wards, are to be elected in any one election, the length of the terms of the aldermen elected at such election shall be determined as provided in this section. The particular provision referred to is the one which provides that, "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 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."

I believe and it is my opinion that this has reference to the first election in a city organized under the council form of government. The purpose is to establish staggered terms so that after the first election each alderman will serve his statutory period of his term.

In the situation you present, I believe petitions should be filed for the unexpired term by those who desire to run for that term and separate petitions should be filed by those who desire to run for a full term.

WALLACE E. WARNER

Attorney General