

OPINION
57-224

March 21, 1957 (OPINION)

VILLAGES

RE: Vacancy on Board - How Filled

This is in reply to your letter of March 8, 1957, in regard to appointment of a village trustee.

Your inform us that at the last election no one ran for the office. You do not specifically state what office is concerned but indicate that it is one of the offices covered by section 40-0719 of the N.D.R.C. of 1943. Your question is whether under the circumstances an appointment may be made under section 40-0719 of the N.D.R.C. of 1943.

Said section 40-0719 provides:

"40-0719. VACANCIES IN BOARD OF TRUSTEES AND OTHER OFFICES; HOW FILLED; TERM. If a vacancy occurs in the board of trustees or in any other office, such vacancy shall be filled by appointment at a special meeting of the board. If a vacancy is to be filled on the board of trustees, the appointment shall be made from the district from which the retiring trustee was elected. All appointments shall be for the unexpired term."

The question thus becomes whether there is a vacancy in the office concerned. The general rule in this country would appear to be that in the absence of express provision and unless the legislative intent to the contrary is manifest, municipal officers hold over until their successors are provided. See: 2 McQuillin, Municipal Corporations, Second Edition 220, section 507. Specific statutory provisions would appear applicable in this case, however. Note the provisions as to both members of the board of trustees. (Section 40-0704 of the N.D.R.C. of 1943) and other officers (Section 40-0708 of the 1953 Supplement of the N.D.R.C. of 1943) to the effect that such officers hold office until the third Tuesday in March following or until their successors are elected and qualified. For the effect of a provision as to holding of office for a term of two years "and until his successor is elected and qualified" see: *Jeness v. Clark*, 21 N.D. 150, 129 N.W. 357. For general authorities on similar provisions as to holding over where no successor is elected or qualified, see: 62 C.J.S. 938, Municipal Corporations, Section 499, 43 Am. Jur. 19-22 Sections 161-165, 2 McQuillin 2nd. Ed. 220, section 507.

It is the opinion of this office that there is no vacancy in the office to which you have reference by reason of the fact that no one ran for the office at the last election. If, of course, the person who held office up to the date of the last election has died, been removed, resigned, has removed from the municipality or has otherwise vacated such office either before or after the last municipal election, it would be possible to appoint someone to fill the unexpired term. The appointee to fill such unexpired term would, of

course, hold over until the time of the next municipal election and until his successor was duly elected and qualified.

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