

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

DARRELL F. SMITH, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

February 24, 1966

DEPARTMENT OF LAW OPINION NO. 66-10 (R-59)

REQUESTED BY: THE HONORABLE LLOYD D. BRUMAGE
Pinal County Attorney

QUESTION: When one is appointed as county attorney to fill a vacancy created by the resignation of the incumbent, does the appointee serve the balance of the term to which his predecessor was elected?

ANSWER: Yes.

The County Attorney is elected by the qualified electors of the county. Arizona Constitution, Art. XII, Sec. 3. The office of County Attorney becomes vacant upon the resignation of the incumbent and the lawful acceptance thereof. A.R.S., Sec. 38-291(3). The Board of Supervisors may fill by appointment a vacancy in the office of County Attorney. A.R.S., Sec. 11-251(16). In the absence of a statute to the contrary, it is generally held that officers, whether elected or appointed to fill a vacancy, will hold for the full period of the unexpired term. 67 C.J.S. Officers, Sec. 53. This rule is recognized in State v. Moore, 49 Ariz. 51, 66, 64 P.2d 809 (1937), wherein the court dealt with the filling of a vacancy in the office of a tax commissioner. The court said:

"The only reference to the filling of such vacancies was in the following language:

'The member of the Commission having the shortest time to serve, and not holding his office by appointment or by election to fill a vacancy, shall be chairman of said commission.' (Italics ours.)

Opinion No. 66-10
(R-59)
February 24, 1966
Page Two

Were it not for the sentence quoted, the Governor, under the constitutional provision above set forth, would fill the vacancy for the remainder of the unexpired term."

The constitutional provision referred to is Article V, Section 8, which reads as follows:

"When any office shall, from any cause, become vacant, and no mode shall be provided by the constitution or by law, for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment."

A person who is appointed to fill a vacancy, after filing his official oath and bond, if a bond is required, possesses all the rights and powers of the officer who previously occupied the office. A.R.S. Sec. 38-361. The person so appointed acquires the remaining or unexpired portion of the term. Sheen v. Hughes, 4 Ariz. 337, 40 Pac. 679 (1895).

Based on the foregoing, it is our opinion that since the Constitution and statutes do not, expressly or by necessary implication, provide for an election to fill a vacancy in the office of County Attorney, a person appointed to fill such vacancy serves the balance of the term to which his predecessor was elected.

Respectfully submitted,



DARRELL F. SMITH
The Attorney General

DFS:sjj