

March 26, 1948

Wilson
Mr. W. V. Olin
Justice of Peace
Precinct 1, Greenlee County
Clifton, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Sir:

Your letter of March 19 propounded several questions with regard to your appointment to the position created by the removal of the former Justice of Peace in your precinct.

The present law governing your term of office appears to be covered by provisions of Section 17-304 as amended by the laws of 1945, Chapter 69, Page 1, which law reads the same as it did prior to amendment except that the two year term has been changed to a four year term and presently reads as follows:

"The officers of justice precinct shall be a justice of the peace and a constable, who shall be elected by the qualified electors at the general election for state and county officers for terms of four (4) years each ****."

There is no provision in the Constitution of the State of Arizona relative to the length of term of office for the justice of peace, but the Constitution does provide that the jurisdiction and duties of the justice of peace shall be governed by the Legislature. Article 4, part 2, section 19(16), Constitution of Arizona; Article 6, section 9, Arizona Constitution.

There is likewise no provision in the Constitution covering the filling of vacancies which may occur in the office of justice of peace; the Constitution provides that, where there is no provision in the Constitution or by-law for filling vacancies, the Governor shall fill the vacancies by appointment. Article 5, section 8, Arizona Constitution.

In the instance of justice of peace, the law does provide for appointment to fill vacancies and provides that the Board of Supervisors shall fill the vacancies occurring in precinct offices. Section 17-309(16), A.C.A., 1939.

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The justice precincts are created by the County Supervisors and the name or number of the same are left to that board. Section 17-504, A.C.A., 1939, as amended.

It will be noted that the amendment to Section 17-504 creating the four year term occurred by the laws of 1945 and, therefore, a justice of peace elected thereafter during the general election of 1946 would be elected for a period of four years in accordance with the provisions of the amended law.

Vacancies occurring in any office during the term of incumbency are filled by the appointing power for the remainder of the term. Section 12-104, A.C.A., 1939.

It would therefore appear from the foregoing that the supervisors' appointment of your term through 1950 was for the remainder of your predecessor's term and that your appointment is valid for that period. In order for it to be otherwise there would have to be a provision contrary to that effect in the law relating to the filling of vacancies occurring in the office of justice of peace and there is no such provision.

Inasmuch as there is no two year provision in the Constitution regarding the length of term of office of the justice of peace nor is there any other provision as to length of term it is believed that the Legislature has a perfect right to change the length of term of the office and no Constitutional amendment would be necessary.

It appears that Section 20-101, A.C.A., 1939 has not been amended to change the two year provision contained therein to a four year provision as in Section 17-504. However, by rules of statutory construction it may be said that the two sections are now in direct conflict and therefore the later expression of the legislature, i.e., Section 17-504, A.C.A., as amended, governs in this instance.

By reason of the foregoing it is believed that you would not have to stand for election in 1948 but that your appointment has been legally made to cover the period to December 31, 1950.

Yours very truly,

EVO De CONCINI
Attorney General

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FRED O. WILSON
Assistant Attorney General