



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

November 14, 1978

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Honorable William Platt
Judge of the Superior Court
Pinal County Superior Court
Florence, Arizona 85232

Re: I78-261 (R78-285)

Dear Judge Platt:

Recently you requested our opinion on when your term as Superior Court judge expires. As we understand it, you were appointed to fill the vacancy created by the death of a judge who was in the second year of a four year term.

The succession and term of office for superior Court judges is governed by Article VI, Section 12 of the Arizona Constitution. The first paragraph of this provision, in pertinent part, provides:

Judges of the superior court in counties having a population of less than one hundred fifty thousand persons according to the United States census shall be elected by the qualified electors of their counties at the general elections. They shall hold office for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election, and until their successors are elected and qualify (Emphasis supplied.)

The language "except as provided by this section" refers to the second paragraph of Article VI, Section 12 of the Arizona Constitution, which states:

The governor shall fill any vacancy in such counties by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term. (Emphasis supplied.)

Office of the
Attorney General
Phoenix, Arizona

Honorable William Platt
November 14, 1978
Page 2

The first paragraph of Article VI, Section 12 of the Arizona Constitution provides that the regular term for superior court judge, elected from a county such as Pinal, is four years. An election must be held every four years to determine who shall hold the office of superior court judge for the next four year regular term.

The second paragraph provides for a mid-term election to be held during the general election to determine who will serve during the unexpired term when a vacancy occurs during the first half of the four-year term. The election contest which you entered was conducted pursuant to this paragraph. Your question thus arises from the failure of that paragraph to specify whether the successful contestant's term begins on the first Monday in January after the election as is the case when the election concerns a full four-year term, or whether the winner assumes the office upon being qualified.

We believe that the term of the successful contestant begins on the first Monday in January following the election contest. We conclude by construing the first and second paragraphs of the constitutional provision in pari materia in order to give logical effect to the entire section. Article VI, Section 12 expresses the will of the people that in counties having a population of less than one hundred fifty thousand persons there exists a preference for elected, rather than appointed, judges. To promote that interest, the section limits the service of appointed judges to a maximum of one-half the regular "elected" term. Had the section intended to restrict even more severely the duration of the appointed terms, it would necessarily have provided for special elections. This was not done; rather, the constitutional section provides for the filling of vacancies by gubernatorial appointment pending the next general election. Thus, two situations could foreseeably arise depending whether the vacancy occurred during the first or second half of the term.

Where the vacancy occurred in the latter half of the term, the next general election is held to determine who will serve during the subsequent regular four-year term. This election has no pertinence to the almost-concluded term then being served. Any other construction of this provision would lead to the anomalous result that the regular general election would be merely a contest to determine who would serve the remainder of the unexpired term, i.e., two months. The successful contestant of such an election would only be entitled to hold office until the next regular term begins on the first Monday in January after the election, the date on

Office of the
Attorney General
Phoenix, Arizona

Honorable William Platt
November 14, 1978
Page 3

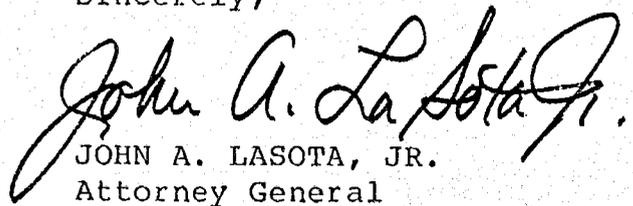
which the former term expires. Consequently, no one would be entitled to hold office when the term ended, because the election would have been held solely to determine who serves the unexpired two month term.

The other possible situation arises where, as here, a vacancy occurs during the first half of the judicial term. In that event, the appointee would serve until the next general election - which would occur mid-term. In that election a successor to complete the unexpired term would be chosen. We see no reason why the time for the assumption of the office would differ if the election is held under the second, rather than the first, paragraph of the constitutional section. A.R.S. § 38-295.B requires every officer to continue discharging the duties of the office although his or her term has expired until the successor has qualified. We think that that language can be read to explain the phrase appearing in both paragraphs of the constitutional provision which commands the judge to serve until his or her successor is elected and qualified. The constitutional mandate, and the statutory one as well, require the judge who is serving to continue to carry out the duties and responsibilities of the office until the successor is qualified. Thus, in the event that a successor would not be qualified by the first Monday in January following the general election, the incumbent, whether elected or appointed, would serve until the successor was duly qualified.

In conclusion, the election you entered was to determine who will serve the unexpired portion of the former judge's four-year term as superior court judge. The election you entered, therefore, was conducted pursuant to the second paragraph of Article VI, Section 12 of the Arizona Constitution. Accordingly, the term of the successful contestant in the general election will begin on the first Monday in January 1979. Your term then, would not expire before this date. Similarly, we believe that had the vacancy occurred during the second half of the judicial term and the election held at the regular general election, the successful contestant would have been unable to assume the office until the first Monday in January following that election.

If you have any questions concerning the foregoing, please contact us.

Sincerely,


JOHN A. LASOTA, JR.
Attorney General