



**WILLIAM J. SCOTT**  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

January 20, 1976

FILE NO. S-1037

**OFFICERS:**  
Filling Vacancy in  
Office of County  
Clerk

Honorable Joseph P. Koval  
State's Attorney of Macoupin County  
128 South Broad  
Carlinville, Illinois 62626

Dear Mr. Koval:

This responds to your request for an opinion concerning the filling of a vacancy in the office of county clerk due to the death of the incumbent on December 25, 1975. His term would have expired in December 1978. You have asked several questions which I shall answer in turn.

Your first question is as follows:

Must a special election be called in Macoupin County, Illinois, for the purpose of electing a successor county clerk to fill the unexpired

Honorable Joseph P. Koval - 2.

term, and if so, may it be held in conjunction with the general election to be held on November 2, 1976?

Section 25-11 of The Election Code as amended by Public Act 79-118 (Ill. Rev. Stat. 1973, ch. 46, par. 25-11, as amended) provides in part as follows:

" \* \* \*

When a vacancy occurs in any county which is not a home rule unit in any elective county or precinct office at any time before the expiration of the term of such vacant office, such vacancy shall be filled within 60 days by appointment of the county central committee of the political party of which the incumbent was a candidate at the time of his election. The appointee shall be a member of the same political party as the person he succeeds was at the time of his election, and shall be otherwise eligible to serve in the office vacated. The appointee shall serve until the next general, county or precinct election when a successor shall be elected for the unexpired term or a full term as the case may require. If a vacancy occurs in any such office to which the incumbent was elected other than as a candidate of a political party, the presiding officer of the county board, with the advice and consent of the county board, shall, within 60 days of the date the vacancy occurs, appoint some person, possessing the qualifications for such office, to serve until the next general, county or precinct election when a successor shall be elected for the unexpired term or a full term as the case may require.

\* \* \*

Honorable Joseph P. Koval - 3.

Under this Act it is clear that a special election must be held to fill the unexpired term and that it must be filled at the next general or county election. A special election is simply one held at other than regularly recurring intervals, and even though it is not a general election, it may be held at the same time as a general election. If the next such election is on November 2, 1976, then the special election may be held in conjunction with the general election on that date. See opinion No. S-973, issued September 24, 1975.

Your second question is:

Must a special primary election be called for the purpose of nominating candidates to be voted on at said special general election?

I am of the opinion that a special primary election must be held to nominate candidates for the office. See opinion No. S-735, issued April 17, 1974. In that opinion I stated that it is necessary to give notice of the special primary election at least 114 days before the election, a conclusion which you question. Under section 7-12 of The Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 7-12) candidates for the nomination may file their petition not more than 99 nor less than 92 days prior to the date of the

Honorable Joseph P. Koval - 4.

primary. Under section 7-61 (Ill. Rev. Stat. 1973, ch. 46, par. 7-61) notice of the primary must be given 15 days prior to the maximum time provided for the filing of petitions. Since the candidates have only 8 days during which to file, the 61 days required for certification by the State Board of Elections under section 7-60 (Ill. Rev. Stat. 1973, ch. 46, par. 7-60) can run concurrent with the 92 day period. The time for canvassing the primary returns can run during the seven week period which is required between the primary and the special election. (Ill. Rev. Stat. 1973, ch. 46, par. 7-5.) I, therefore, confirm the conclusion expressed in opinion No. S-735.

Your third and fourth questions are:

Is the Macoupin County central committee of the political party of which the incumbent was a member authorized to fill the vacancy existing in the office of county clerk of Macoupin County by appointing a county clerk to serve until December 1978, when the regular term expires?

If a person is appointed by the Macoupin County central committee to fill such vacancy, for how long a period of time does such person serve?

Under the portion of section 25-11 quoted above, it is clear that the appointee will serve only until the next

Honorable Joseph P. Koval - 5.

general or county election which will be in November 1976, unless there is an earlier county election.

Your fifth question concerns the application of section 7-8(c) of The Election Code (Ill. Rev. Stat. 1973, ch. 46, par. 7-8(c)), which provides in part as follows:

"\* \* \* In the organization and proceedings of the county central committee, each precinct committeeman shall have one vote for each ballot voted in his precinct by the primary electors of his party at the primary at which he was elected; \* \* \* "

The first part of your fifth question is as follows:

Is the county central committee authorized to establish, in accordance with its own rules, a different method of voting, such as giving each precinct committeeman one vote regardless of the number of total votes cast in the precinct at the primary election at which the committeeman was elected?

I am of the opinion that the county central committee must act in accordance with the quoted statutory provision. There is no authority to establish a different method of voting. See opinion No. S-961, issued September 10, 1975.

The second and third parts of your fifth question can be paraphrased as follows:

Honorable Joseph P. Koval - 6.

Assuming there are more than two candidates, is the number of votes required to effect an appointment a majority of the possible number of votes, a majority of votes cast or a plurality of the votes cast?

There is no statutory provision which provides an answer to this question. As I stated in opinion No. S-961, political parties and their committees are voluntary associations and, in absence of regulation by the legislature, may exercise their power through their own rules, customs, conventions or caucuses. Thus, I am of the opinion that the central committee must determine how it will make its appointment.

Very truly yours,

A T T O R N E Y   G E N E R A L