



GENTNER DRUMMOND
ATTORNEY GENERAL

ATTORNEY GENERAL OPINION
2026-16

The Honorable Jack Thorp
District Attorney for District 27
307 East Cherokee
Wagoner, OK 74467

October 16, 2026

Dear District Attorney Thorp:

This office has received your request for an Attorney General Opinion in which you ask, in substance, the following questions:

- 1. Must a vacancy in the office of district judge be filled through the Judicial Nominating Commission process?**
- 2. May the Governor appoint a person already elected to the next regular term of that office directly to the remainder of the unexpired term, without first receiving nominees from the Judicial Nominating Commission?**
- 3. Does election without opposition to the next regular term create any legal entitlement or preference to serve the unexpired term?**
- 4. Are the unexpired term and the subsequently elected four-year term legally distinct for purposes of appointment and succession?**
- 5. If the person elected to the next regular term seeks appointment to the unexpired term, must that individual apply through the Judicial Nominating Commission and compete with all other qualified applicants?**

I.
SUMMARY

A vacancy in the office of district judge must be filled by the Governor from three nominees submitted by the Judicial Nominating Commission ("Commission"). The Constitution commits the question to the Legislature: vacancies "shall be filled in the manner provided by law." OKLA. CONST. art. VII, § 8(f). The Legislature answered in title 51, section 10(B) of the Oklahoma Statutes, which directs that when a vacancy occurs in the office of district judge, the Governor "shall, in filling such vacancy, utilize the services of the Judicial Nominating Commission in the

manner as provided for in the filling of judicial offices under Section 4, Article VII-B of the Oklahoma Constitution.” That is the only manner the law provides, and it is exclusive of all others.

Title 51, section 1 supplies no alternative. That section fixes when an officer-elect takes office. It does not decide who fills a vacancy. It is a general provision that governs every elective office in this State, and it applies only “[e]xcept when otherwise specially provided.” Section 10(B) specially provides otherwise for district judgeships. Section 1 confers appointment authority on no one. And it cannot advance the commencement of a district judge’s four-year term, which the Constitution fixes on the second Monday of January. OKLA. CONST. art. VII, § 8(f).

A candidate who draws no opponent is deemed elected under title 26, section 6-102 of the Oklahoma Statutes, but only to the term for which he or she filed. The unexpired term and the succeeding four-year term are therefore distinct tenures, filled in different ways. A person elected to the next term may apply to the Commission for appointment to the unexpired term. He or she applies as every other lawyer does, without preference or priority.

II. BACKGROUND

Your request arises from a vacancy in the office of district judge created by the retirement of the incumbent in an election year. A single candidate has filed for the ensuing four-year term and is therefore unopposed. That candidate is deemed elected. His or her term does not begin until the second Monday of January. You advise that other districts are similarly situated. This opinion addresses the questions of law that your request presents. It does not resolve any question of fact concerning a particular vacancy or a particular candidate.¹

The District Court is a constitutional court. OKLA. CONST. art. VII, §§ 1, 7. District judges are “elected by the voters of the several respective districts or counties at a non-partisan election in the manner provided by statute.” *Id.* § 9. Their terms “shall be for four years commencing on the second Monday of January in 1971 and vacancies shall be filled in the manner provided by law.” *Id.* § 8(f). Every office becomes vacant upon “[t]he death of the incumbent or his resignation,” among other events, and “[t]he fact by reason whereof the vacancy arises shall be determined by the authority authorized to fill such vacancy.” 51 O.S.2021, § 8. As to a district judgeship, that authority is the Governor. 2002 OK AG 24, ¶ 3; *see* OKLA. CONST. art. VI, § 13; 51 O.S.2021, § 10(A)–(B).

Article VII-B of the Constitution, adopted in 1967, created the Judicial Nominating Commission and prescribed the procedure for filling judicial vacancies:

When a vacancy in any Judicial Office, however arising, occurs or is certain to occur, the Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court three (3) nominees, each of whom has previously notified the Commission in writing that he will serve as a Judicial Officer if appointed. The Governor shall appoint one (1) of the nominees

¹ Questions of fact are outside the scope of an Attorney General Opinion. *See* 2024 OK AG 20, ¶¶ 2, 4; 74 O.S.Supp.2025, § 18b(A)(5).

to fill the vacancy, but if he fails to do so within sixty (60) days the Chief Justice of the Supreme Court shall appoint one (1) of the nominees, the appointment to be certified by the Secretary of State.

OKLA. CONST. art. VII-B, § 4. By its own terms, that article governs “the selection and tenure of all Justices of the Supreme Court and Judges of the Court of Criminal Appeals,” and it defines “Judicial Office” to mean those offices alone. *Id.* § 1(a)–(b). This office has accordingly recognized that “[t]he procedures for filling vacancies in such judicial offices as provided in Section 4 are made applicable to vacancies in the office of district judge only by legislative enactment.” 2002 OK AG 24, ¶ 4. Decisions and opinions construing article VII-B, section 4 remain instructive because title 51, section 10(B) adopts the process under section 4.

The relevant statute is title 51, section 10. Subsection A provides that “[a]ll vacancies in state offices,” subject to exceptions not relevant here, “shall be filled by appointment by the Governor.” Subsection B then prescribes the manner for judicial vacancies:

When a vacancy occurs in the office of district judge, associate district judge, or judge of any intermediate appellate court, the Governor shall, in filling such vacancy, utilize the services of the Judicial Nominating Commission in the manner as provided for in the filling of judicial offices under Section 4, Article VII-B of the Oklahoma Constitution.

51 O.S.2021, § 10(B).²

Two further provisions of title 51 bear on your questions. Section 15 provides that “[e]very appointed officer shall hold his office until the end of the term for which the officer whom he succeeds was elected or appointed, and until his successor is elected and qualified.” And section 1, on which this office understands some have relied, provides:

Except when otherwise specially provided, the regular term of all officers elected under the laws of the state, when elected to a full term, shall commence on the second Monday of January next succeeding their election, and any officer so elected shall qualify and enter upon the duties of his office on said date or within ten (10) days thereafter; but if the office to which any person is elected be vacant at the time of his election or becomes vacant before his time for qualifying, even if he were not elected to fill the vacancy, he shall forthwith qualify and enter upon the duties of his office.

51 O.S.2021, § 1.

Finally, under the Election Code, “[a]ny candidate who is unopposed in any election shall be deemed to have been nominated or elected, as the case may be,” and the candidate’s name does not appear on the ballot. 26 O.S.2021, § 6-102.

² Both 2002 OK AG 24, ¶ 4, and 2006 OK AG 2, ¶ 1, cite this command as title 51, section 10(A) of the Oklahoma Statutes. The subsection was redesignated as section 10(B) in 2021, when the Legislature added provisions governing vacancies in the office of United States senator. 2021 Okla. Sess. Laws ch. 582, § 2. The operative language is unchanged.

Your questions ask how these provisions fit together, and in particular whether title 51, section 1, offers a path around section 10(B). In construing a legislative enactment, the cardinal rule is to ascertain and give effect to legislative intent, and that intent is first sought in the language of the statute itself. *Special Indem. Fund v. Harold*, 1964 OK 267, ¶ 17, 398 P.2d 827, 830. Applied here, that rule yields a clear answer. Section 10(B) supplies the manner in which a vacancy in the office of district judge is filled, and section 1 does not displace it.

III. DISCUSSION

A. A Vacancy in the Office of District Judge Must Be Filled Through the Judicial Nominating Commission.

The Constitution does not itself prescribe how a vacancy in the office of district judge is filled. It delegates that question: vacancies “shall be filled in the manner provided by law.” OKLA. CONST. art. VII, § 8(f). The inquiry is therefore statutory, and the statute is section 10(B) of title 51.³

Two commands operate together. Section 10(A) directs that vacancies in state offices “shall be filled by appointment by the Governor.” A district judgeship is a state office, and no exception in that subsection reaches it. 2002 OK AG 24, ¶ 3. Section 10(A) supplies the duty. Section 10(B) supplies the manner. When a vacancy occurs in the office of district judge, “the Governor shall, in filling such vacancy, utilize the services of the Judicial Nominating Commission in the manner as provided for in the filling of judicial offices under Section 4, Article VII-B.” The word “shall” signifies a command, not an option. *King v. King*, 2005 OK 4, ¶ 23 n.50, 107 P.3d 570, 580 n.50; *see also* 2006 OK AG 2, ¶ 4 (applying the same rule to the “shall” in article VII-B, section 4).

The Legislature made that direction mandatory by deliberate amendment. When it first extended the Commission’s services to district judgeships in 1968, it did so permissively: the Governor “may, in filling such vacancy, utilize the services of the Judicial Nominating Commission.” Senate Bill 450, 1968 Okla. Sess. Laws ch. 49, § 1. The title of the act said as much, describing its purpose as “[p]roviding that Governor may use services of Judicial Nominating Commission in filling certain vacancies.” *Id.* The provision remained permissive through amendments in 1971 and 1978. House Bill 1177, 1971 Okla. Sess. Laws ch. 107, § 1; Senate Bill 596, 1978 Okla. Sess. Laws ch. 20, § 1. In 1980, the Legislature replaced “may” with “shall,” and the title of that act announced the change: “[r]equiring the use of a certain commission when filling certain judicial vacancies.” House Bill 1784, 1980 Okla. Sess. Laws ch. 272, § 28. A change from permission to command evinces a legislative intent to foreclose the alternatives.

³ Filling a vacancy by appointment is consistent with the requirement that district judges be elected. OKLA. CONST. art. VII, § 9. Section 8(f) of the same article directs that vacancies be filled in the manner provided by law, and the appointee’s tenure is bounded: he or she serves only until a successor is elected and qualified. 51 O.S.2021, § 15. In *White v. Stitt*, the court held that the judges of a business court division are district judges, and that a statute substituting gubernatorial appointment and reappointment for election violated article VII, section 9. 2025 OK 68, ¶¶ 26, 28, 579 P.3d 636, 645–46. What section 9 forbids is displacing the elective process, not filling an interim vacancy pending it.

The manner incorporated is specific. The Commission chooses and submits three nominees, each of whom has advised the Commission in writing that he or she will serve if appointed. The Governor appoints one of the three. If the Governor does not act within sixty days, the Chief Justice appoints one of the three, and the Secretary of State certifies the appointment. OKLA. CONST. art. VII-B, § 4. That is how the Oklahoma Supreme Court has described the process when a district judgeship becomes vacant. *See State ex rel. Stuart v. Rapp*, 1981 OK 87, ¶ 1 & n.1, 632 P.2d 388, 389 & n.1 (district judge vacancy created by resignation; Commission solicited applications and submitted three nominees; Governor appointed one). This office said the same earlier this year, describing a special judge as serving temporarily until an associate district judgeship is “filled through the process in title 51, section 10(B) of the Oklahoma Statutes.” 2026 OK AG 2, ¶ 12.

Section 10(B) prescribes that manner by incorporation. It directs the Governor to proceed “in the manner as provided for in the filling of judicial offices under Section 4, Article VII-B of the Oklahoma Constitution.” The Legislature could have set the procedure out in full. It chose instead to adopt it by reference. Where one statute adopts the provisions of another law by specific reference, the adopted provisions operate as though written into the adopting statute. *See CompSource Mut. Ins. Co. v. State ex rel. Okla. Tax Comm’n*, 2018 OK 54, ¶ 20, 435 P.3d 90, 98 (a referenced statute “is considered as incorporated in the one making the reference”); *Pentagon Acad., Inc. v. Indep. Sch. Dist. No. 1 of Tulsa Cnty.*, 2003 OK 98, ¶ 17, 82 P.3d 587, 591. Article VII-B does not reach district judgeships by its own force. This office has recognized the same. The procedures of article VII-B, section 4 “are made applicable to vacancies in the office of district judge only by legislative enactment.” 2002 OK AG 24, ¶ 4. Section 10(B) supplies that reach. What it adopts is the whole of section 4’s procedure.

Where the Constitution confers the power to do a particular act and prescribes the means and manner of doing it, that means or manner is exclusive of all others. *McCurtain Cnty. Excise Bd. v. St. Louis-San Francisco Ry. Co.*, 1959 OK 100, ¶ 18, 340 P.2d 213, 216; *City of Sapulpa v. Land*, 1924 OK 92, ¶ 28, 223 P. 640, 643–44. Article VII, section 8(f) confers the power to fill a vacancy in the office of district judge and commits the manner of its exercise to the Legislature. Section 10(B) is the manner the Legislature prescribed. The rule does not turn on whether the manner appears in the Constitution or in a statute. A public officer has only the authority the law confers, and he or she must exercise it in the manner the law prescribes. *Okla. Pub. Emps. Ass’n v. Okla. Dep’t of Cent. Servs.*, 2002 OK 71, ¶ 27, 55 P.3d 1072, 1084. The manner the Legislature prescribed under section 8(f) is the manner the law provides, and no other manner will do. In 2006, this office applied the same principle to article VII-B’s procedure. The question was whether the Commission could submit fewer than three names when fewer than three qualified applicants were willing to serve. The answer was no. Because the Constitution prescribes the means of filling a judicial vacancy, that means “is exclusive of all others,” and the Commission must continue the process until it has three qualified nominees to submit. 2006 OK AG 2, ¶¶ 5–6.

The Governor has no reservoir of appointment authority outside title 51, section 10(B). Section 10(A)’s general command that vacancies in state offices be filled by appointment does not supply one, because section 10(B), in the same statute, prescribes the manner for judicial vacancies. Neither does article VI, section 13, which conditions the Governor’s general vacancy-filling power on the absence of a contrary provision, that is, “unless otherwise provided by law.”

Where the Legislature has wanted a different mechanism for a judicial vacancy, it has said so. For vacancies in the office of associate district judge, title 20, section 122(3) permits a special judge to be appointed within the judicial administrative district “to hold office for the duration of such vacancy,” on the presiding judge’s determination that the vacancy exists. 20 O.S.Supp.2025, § 122(3). This office recently confirmed that authority, while making clear that it is a temporary expedient only. A special judge who “wants to be considered for the office of associate district judge once a vacancy is determined . . . must follow the process for appointment or election under Oklahoma law.” 2026 OK AG 2, ¶¶ 11–12. No comparable provision exists for the office of district judge.

B. Section 1 of Title 51 Does Not Permit the Governor to Bypass the Commission.

Section 1 is a general provision of title 51. It governs when officers elected under the laws of this State take office. It is not a judicial-vacancy statute. The section has two operative parts. The first fixes the commencement of a regular term and the time for qualifying. This opinion will refer to it as the commencement clause. The second addresses a person elected to an office that is already vacant. This opinion will refer to it as the vacancy clause: “but if the office to which any person is elected be vacant at the time of his election or becomes vacant before his time for qualifying, even if he were not elected to fill the vacancy, he shall forthwith qualify and enter upon the duties of his office.” 51 O.S.2021, § 1. The contrary argument presented to this office rests on the vacancy clause. If that clause were to apply to district judgeships, a person elected to the next term of a judgeship that is presently vacant would take office at once, and the Commission process would be unnecessary. But section 1 will not bear that weight.

Begin with what is not in dispute. When a district judge resigns, the office is vacant. 51 O.S.2021, § 8. It stays vacant until the Governor fills it from the Commission’s nominees. But a vacancy is the occasion for section 10(B) to operate, not a reason to look past it. Section 1 does not say who fills the vacancy or how.

First, section 1 reaches all officers elected under the laws of this State. But it applies only “[e]xcept when otherwise specially provided,” and the Legislature has specially provided otherwise for district judgeships. Section 10(B) addresses vacancies in the office of district judge by name and prescribes exactly how they are to be filled. This office has read that exception the same way. In 1988, it treated a statute setting a different date for the commencement of a county officer’s term as “a special provision that is allowed for in the general statute, 51 O.S. 1.” 1988 OK AG 54, ¶ 12. The exception displaced the commencement clause in that instance, and the vacancy clause continued to operate. The special provision there fixed when a term begins, a subject the vacancy clause does not address. Section 10(B) fixes how a vacancy is filled, which is the very subject that the clause would reach here.

Second, section 10(B) does not merely direct the Governor to consult the Commission. It adopts the procedure of article VII-B, section 4, and it makes that procedure the statutory manner of filling a vacancy in the office of district judge. The manner adopted is a comprehensive one. Section 4 operates on a vacancy “however arising,” and it operates when a vacancy “occurs or is certain to occur.” OKLA. CONST. art. VII-B, § 4. The Commission shall submit three nominees. The Governor shall appoint one of them. *Id.* Title 51, section 10(B) fixes when the process applies. Article VII-

B, section 4 fixes how it operates. Together, they leave no vacancy in the office of district judge outside the process. There is no exception for a vacancy that arises in an election year. There is none where a successor for the next regular term is already known. The Commission may act before the office is empty.

Third, title 51, section 1 is general and section 10(B) is specific. Section 1 speaks to “all officers elected under the laws of the state.” It names no office, and it addresses no particular vacancy. Section 10(B) speaks to the office of district judge by name, and it prescribes the manner in which a vacancy in that office is to be filled. “[W]hen there is a conflict between two statutes, one specific . . . and one general, the statute enacted for the purpose of dealing with the subject matter controls over the general statute.” *Stitt v. Treat*, 2024 OK 21, ¶ 30, 546 P.3d 882, 893 (quoting *Multiple Injury Trust Fund v. Coburn*, 2016 OK 120, ¶ 23, 386 P.3d 628, 636). A special statute prevails over a general one that “does not refer to the particular subject matter[] but does contain language which might be broad enough to cover the subject matter if the special statute was not in existence.” *Coburn*, 2016 OK 120, ¶ 23, 386 P.3d at 636. That describes section 1. It does not refer to judicial vacancies. It reaches a vacancy in a district judgeship only because it reaches every elective office in the State. Section 10(B) was enacted for the purpose of dealing with this subject, and it prescribes the terms on which the subject is governed. It names the office in which the vacancy arises. It names the officer who must fill it. And it fixes the process that officer must use. Two provisions that direct different persons to fill the same office in different ways cannot both be followed. Section 10(B) therefore controls. A vacancy in the office of district judge is filled by the Governor from the three nominees the Commission submits, and the vacancy clause in title 51, section 1 gives way.

Fourth, no repeal by implication is required. Each provision has a field of its own, and both are given effect. Repeals by implication are disfavored, and all statutory provisions must be given effect if possible. *Stitt*, 2024 OK 21, ¶ 27, 546 P.3d at 892 (quoting *City of Sand Springs v. Dep’t of Pub. Welfare*, 1980 OK 36, ¶ 28, 608 P.2d 1139, 1151). Were the conflict irreconcilable, the later enactment would prevail. *Stitt*, 2024 OK 21, ¶ 27, 546 P.3d at 892. Section 1 traces to the Revised Laws of 1910. R.L. 1910, § 4269. The judicial-vacancy provision of title 51, section 10 was added in 1968 to implement the new Judicial Article, permitting the Governor to use the Commission in appointing district, associate district, and intermediate appellate judges. *See* Senate Bill 450, 1968 Okla. Sess. Laws ch. 49, § 1. It was made mandatory in 1980. House Bill 1784, 1980 Okla. Sess. Laws ch. 272, § 28. Section 10(B) is the later expression of the legislative will. Therefore, even if the two provisions could not be harmonized, section 10(B) would still control.

Fifth, the Governor’s duty to fill the vacancy is not excused merely because a successor for the next term is already known. *Ferguson v. Lawrence* held that where an office “becomes vacant by death, resignation, or other cause, it is the duty of the [appointing authority] to appoint a person to fill the vacancy until the commencement of the next regular term.” 1916 OK 1, ¶ 0, 157 P. 1038; *see also id.* ¶ 8, 157 P. at 1039 (same on rehearing). That is true here. A judge resigned, the office is vacant, and the appointment runs to the commencement of the next regular term. Section 10(B) states the duty in mandatory terms and identifies the process that the Governor must use to discharge it.

Sixth, the law leaves no gap for title 51, section 1 to fill. If the concern is that a vacancy may sit open, the Constitution already answers it. Should the Governor fail to appoint within sixty days of receiving the Commission's nominees, the Chief Justice appoints one of those nominees, and the Secretary of State certifies the appointment. OKLA. CONST. art. VII-B, § 4. The remedy for delay is that backstop. Reading title 51, section 1 to install the judge-elect would make the backstop pointless. It would also supply a route around the Commission. A vacancy left unfilled until after the next election would be filled by operation of section 1 rather than by appointment from the Commission's nominees.

Seventh, title 51, section 1 is not an appointment statute. Its subject, as its title reflects, is the beginning of terms and the time of qualifying. It imposes a duty on the officer-elect, who "shall forthwith qualify." It confers no authority on the Governor to appoint anyone to any office. Even on its own terms, the argument fails. It would install the judge-elect by operation of law. It would not authorize the Governor to appoint him or her, and it could not displace the duty that title 51, section 10(B) places on the Governor.

Eighth, section 1 cannot alter the commencement of a district judge's term, which the Constitution fixes at "the second Monday of January." OKLA. CONST. art. VII, § 8(f). The framers of the 1967 Judicial Article knew how to provide for immediate assumption of office where they wished. As to the Supreme Court, they specified that "[t]hose appointed or elected to fill vacancies shall assume office immediately upon qualifying for the office." OKLA. CONST. art. VII, § 2. They included no such provision for district judges. They directed instead that vacancies be filled "in the manner provided by law." *Id.* § 8(f). Title 51, section 1, accordingly, cannot give the judge-elect an early start on his or her own term. At most, it would install him or her in the balance of the predecessor's term, which is precisely the vacancy that section 10(B) commits to the Commission and the Governor.

Ninth, the Legislature knows how to let an unopposed candidate step into a vacancy, and it has never done so for a judicial office. In 1971, it amended section 10 to provide that when a vacancy occurs in a county office after the filing period has closed and a candidate who filed for that office is unopposed, "the county election board shall issue a certificate of election to such unopposed candidate within ten (10) days after such vacancy occurs and he shall immediately qualify for and assume the duties of said office." House Bill 1177, 1971 Okla. Sess. Laws ch. 107, § 1. That is the rule urged here. The Legislature confined it to county offices and left judicial vacancies to the Commission in the same subsection. It then repealed the provision seven years later in favor of a special election. Senate Bill 596, 1978 Okla. Sess. Laws ch. 20, § 1. Two years after that, it made the Commission's involvement mandatory for judicial vacancies. House Bill 1784, 1980 Okla. Sess. Laws ch. 272, § 28. What title 51, section 1 is said to supply, the Legislature supplied expressly for county offices in 1971, withheld from judicial office, and then withdrew in 1978.

The two decisions applying the vacancy clause since 1910 point the same way, although neither arose on these facts. In *Burford v. Bd. of Comm'rs of Lincoln Cnty.*, a county commissioner died, the Governor appointed Burford, and Hoyt was elected that November to the regular term beginning the following January. 1917 OK 40, ¶ 1, 162 P. 780, 781. Hoyt filed his bond, took the oath, and sought to enter upon the duties of the office at once, relying on the identical clause then codified at R.L. 1910, § 4269. *Id.* The court held that the appointee was entitled to serve out the

term of the predecessor under R.L. 1910, § 4282 (now codified at 51 O.S.2021, § 15). *Burford*, 1917 OK 40, ¶ 3, 162 P. at 782. So, no vacancy existed, and the vacancy clause did not apply. *Id.*

King v. Paxton is to the same effect. 1938 OK 290, 79 P.2d 207. A county commissioner died on October 28, the Governor appointed the defendant on October 31, and the plaintiff was elected on November 3 to the term beginning the following July. *Id.* ¶¶ 6–7, 79 P.2d at 207. Quoting the vacancy clause in the 1931 codification of title 51, section 1, the court held that the election was not complete until the results were declared on November 10, that the appointee had qualified by then, and that the plaintiff therefore “had no right to the office until the beginning of the term for which he was elected.” *Paxton*, 1938 OK 290, ¶¶ 10–11, 16, 79 P.2d at 208–09. In each case, the office was already filled, which is why the vacancy clause had no work to do. Neither decision holds that an officer-elect may take a vacant office in derogation of the appointing authority’s power to fill it. And once the Governor appoints under title 51, section 10(B), section 15 fixes the appointee’s tenure through the end of the term.

Practical consequences confirm the reading. Under the contrary view, the mode of filling a judicial vacancy would turn on the accident of timing, that is, on whether the Governor or Chief Justice happened to complete the Commission process before the close of the filing period. A vacancy arising in an election year would be filled by a single unopposed candidate rather than by the merit-selection process the Legislature prescribed. Nothing in title 51, section 1 suggests the Legislature meant to create that exception, and section 10(B) forecloses it.

A prior opinion of this office does not suggest otherwise. In 1988, this office considered the office of county superintendent of schools, which stood abolished by operation of law once it had been vacant for one year. 1988 OK AG 54, ¶¶ 3, 10 (referring to 70 O.S.1981, § 4-101). The question presented was what became of candidates who had filed for such an office. The 1988 Opinion applied the vacancy clause and concluded that a candidate elected to a vacant office may qualify for and assume it, thereby cutting off the running of the one-year period. 1988 OK AG 54, ¶¶ 13–14. Two features of that question are absent from yours. First, no statute prescribed the manner of filling a vacancy in that office. A statute identified an appointing authority, and the Opinion said so. *Id.* ¶¶ 6, 15 (citing then-title 51, section 10(b), the county-office provision now codified at section 10(E), not the judicial-vacancy command now codified at section 10(B)). But no statute directed how a board of county commissioners was to proceed, and the 1988 Opinion did not treat appointment as the exclusive route. Title 51, section 10(B) differs in kind. It names the office. It commands the Governor to act. And it fixes the manner in which he or she must act. Second, the 1988 Opinion treated qualification by the officer-elect and appointment by the board as alternative ways to stop the one-year clock. *Id.* ¶¶ 14–16. The object of title 70, section 4-101 was occupancy of the office, not any particular manner of selection. The 1988 Opinion did not hold that an officer-elect may displace an appointee, and it did not hold that the vacancy clause displaces a prescribed procedure for filling a vacancy. Nor did it consider the decisions construing the vacancy clause. The Legislature has since abolished the office of county superintendent of schools in every county of this State. 70 O.S.2021, § 4-101. The question that the 1988 Opinion answered can no longer arise. Its reading of title 51, section 1 is stated in general terms, however. This office addresses it directly. Paragraphs 13 and 14, and the corresponding portion of paragraph 16, are withdrawn to the extent they may be read to permit a person elected to a succeeding term to enter upon an office for which the law prescribes a particular manner of filling vacancies. Nothing else in the 1988

Opinion is disturbed. Its reading of the exception for matters otherwise specially provided remains the view of this office, as does its identification of the appointing authority for the office it addressed. 1988 OK AG 54, ¶¶ 6, 12, 15.

C. Unopposed Election to the Next Term Creates No Entitlement or Preference to the Unexpired Term.

A candidate unopposed for an office is “deemed to have been nominated or elected, as the case may be,” and the candidate’s name is omitted from the ballot. 26 O.S.2021, § 6-102. That provision settles who will hold the office for the term at issue in the election. It says nothing about any other term. The judge-elect here filed for, and is deemed elected to, the four-year term commencing on the second Monday of January 2027. He or she was neither a candidate for nor elected to the remainder of the predecessor’s term.

Ferguson, Finley v. Combs, and *Paxton* say as much. Each involved a person elected to a succeeding term who claimed the balance of the current one. And in each case, the court held that the officer-elect acquired “no right to the office until the beginning of the term for which he was elected.” *Paxton*, 1938 OK 290, ¶ 16, 79 P.2d at 209; *see also Ferguson*, 1916 OK 1, ¶ 0, 157 P. at 1038 (same). *Ferguson* put it directly: the officer-elect “was not elected to fill out any unexpired term, and we are unaware of any statute providing for the election of a county officer to fill an unexpired term.” 1916 OK 1, ¶ 5, 157 P. at 1039. *Finley* added that “[e]ven if there had been a vacancy, the plaintiff was not elected to fill it.” 1903 OK 13, 71 P. 625, 626. The same is true of district judgeships. No provision of article VII of the Oklahoma Constitution, the Election Code, or title 51 of the Oklahoma Statutes provides for electing a district judge to an unexpired term, and the only mechanism for filling one is appointment under title 51, section 10(B).⁴

D. The Unexpired Term and the Elected Term Are Distinct, and the Judge-Elect Must Compete for the Former.

It follows that the unexpired term and the succeeding four-year term are separate tenures, filled in different ways. The unexpired term is filled by appointment under title 51, section 10(B), and the appointee “hold[s] his office until the end of the term for which the officer whom he succeeds was elected or appointed, and until his successor is elected and qualified.” 51 O.S.2021, § 15; *see Burford*, 1917 OK 40, ¶¶ 2–3, 162 P. at 781–82. That is, the appointee serves until the second Monday of January 2027, when the elected term begins. The elected term is filled by the voters under article VII, section 9 of the Oklahoma Constitution and the Election Code. Serving the remainder of the current term is not serving the next one, and being elected to the next term is not being appointed to the remainder of this one.

A person elected to the next term is free to apply to the Commission for appointment to the unexpired term, and it is neither unusual nor improper for the same individual to hold both terms in succession. But he or she applies as any other lawyer does. The Commission has “jurisdiction

⁴ Article XI of the Election Code, which addresses vacancies and terms for judicial officers, applies to Justices of the Supreme Court and Judges of the Court of Criminal Appeals and their retention elections. *See* 26 O.S.2021, §§ 11-101–11-103, 11-107. It supplies no vacancy mechanism for district judgeships. *Cf. id.* § 11-108 (ballots for district judges and associate district judges).

to determine whether the qualifications of nominees to hold Judicial Office have been met.” OKLA. CONST. art. VII-B, § 3(e). It submits three names, and the Governor selects one of the three. The Commission is “empowered only to ‘submit’ names to the Governor,” and has no authority to fill or declare a vacancy in the office of district judge. 2002 OK AG 24, ¶ 4. Nothing in article VII or article VII-B of the Oklahoma Constitution, title 51 of the Oklahoma Statutes, or the Election Code directs the Commission to nominate a judge-elect, directs the Governor to appoint one, or gives a judge-elect priority over other qualified applicants. *Cf.* 2026 OK AG 2, ¶ 11 (a special judge temporarily serving in a vacant associate district judgeship “must follow the process for appointment or election under Oklahoma law” to hold the office). Until the Governor, or, after sixty days, the Chief Justice, makes an appointment, the judgeship remains vacant, and the district’s business is handled through the assignment and special-judge mechanisms the Constitution already provides.⁵

It is, therefore, the official Opinion of the Attorney General that:

- 1. A vacancy in the office of district judge must be filled in accordance with article VII, section 8(f) of the Oklahoma Constitution. The manner provided by law is that prescribed by title 51, section 10(B). The Governor shall fill the vacancy by utilizing the services of the Judicial Nominating Commission in the manner provided for the filling of judicial offices under article VII-B, section 4 of the Oklahoma Constitution. That manner is exclusive of all others.**
- 2. The Governor may not appoint a person elected to the next regular term of the office of district judge directly to the remainder of the unexpired term without first receiving nominees from the Judicial Nominating Commission. Title 51, section 1 of the Oklahoma Statutes does not authorize such an appointment. By its terms, it applies only “[e]xcept when otherwise specially provided,” it confers no appointment authority, and its vacancy clause is displaced as to district judgeships by the specific provisions of title 51, section 10(B). To the extent paragraphs 13 and 14, and the corresponding portion of paragraph 16, of 1988 OK AG 54 may be read to permit a person elected to a succeeding term to enter upon an office for which the law prescribes a particular manner of filling vacancies, those paragraphs are withdrawn.**
- 3. Election without opposition to the next regular term of the office of district judge in accordance with title 26, section 6-102 of the Oklahoma Statutes creates no legal entitlement or preference to serve the unexpired term of that office.**
- 4. The unexpired term and the subsequently elected four-year term are legally distinct for purposes of appointment and succession. A person appointed to fill the unexpired term holds office until the end of that term and until a successor is elected and qualified. 51 O.S.2021, § 15. The elected term commences on the**

⁵ The Oklahoma Supreme Court has general administrative authority over all courts of this State, “including the temporary assignment of any judge to a court other than that for which he was selected.” OKLA. CONST. art. VII, § 6. The district judges in each judicial administrative district also appoint special judges. *Id.* § 8(h).

second Monday of January following the election. OKLA. CONST. art. VII, § 8(f); 51 O.S.2021, § 1.

- 5. A person elected to the next regular term who seeks appointment to the unexpired term must apply through the Judicial Nominating Commission and must be considered alongside all other qualified applicants, without preference or priority.**



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