

CITIES AND TOWNS: City council, methods of filling vacancy in office of.

March 24, 1937.

Hon. George Dinnen,
Fort Wayne, Indiana.

Dear Sir:

Pursuant to your request of recent date with reference to the authority of the City Council to fill a vacancy in the office of councilman occasioned from death, beg to submit the following opinion:

Section 48-1246, Burns Indiana Statutes, 1933 Revision, provides that:

“In case of a vacancy in the office of councilman from death, resignation or other cause, the Common Council shall fill such vacancy at a special meeting, to be held at a time not less than two nor more than fifteen days after such vacancy is discovered by such council, of which special meeting notice shall be given by the clerk, as herein required, when the council is to fill a vacancy in the office of mayor.”

The council having failed to fill the vacancy within the fifteen-day period it is my opinion that the duty still is imposed upon them to make such selection.

As was said in the case of *State, ex rel., Holman v. Murray*, 42 N. W. 858,

“The failure of the council then to act upon the matter, and its adjournment sine die did not relieve it from the duty, which the law imposed upon it, of making an election. So far as relates to the time when such election should be made, the statute is simply directory. Having neglected its duty at the proper time, from whatever cause, the obligation still rested upon it to elect at the earliest opportunity.”

Again in the case of *State v. Morrison*, 274 S. W. 551, we find this statement:

“The general rule is to the same effect, and statutes fixing the time for holding an election by a municipal board are ordinarily construed as directory ‘to the

extent of permitting and authorizing an election or appointment at a latter day than that named in the law, where the body whose duty it is to elect or appoint on a day certain neglects to perform the duty and the obligation still remains.' ”

The same proposition is announced in a number of cases cited in *State v. City of Buchanan*, 123 S. E. 182.

It is my opinion, therefore, that this duty is a continuing one and mandate might lie if the council neglects to discharge this duty.

PUBLIC INSTRUCTION, SUPERINTENDENT OF: Special school funds, authority of city school boards to interchange budget items.

March 25, 1937.

Hon. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge your letter of March 24th submitting the following question:

“The city of Evansville is unable to secure funds from outside sources to rehabilitate the school buildings and equipment due to the flood. A careful investigation has shown that certain accounts in the budget will show a balance at the end of the fiscal year. May the School Board under the provision of Senate Bill No. 154, passed by the 1937 session of the Legislature, transfer certain sums from accounts in the budget which will be unexpended to capital outlay accounts for the purpose of this rehabilitation work?”

Section 8 of Senate Bill No. 154, approved March 6, 1937, contains the following provision:

“Every such board of school trustees shall have, as respects the levy of taxes by it, power annually to levy such amount of taxes as in the judgment of such board, made matter of record in its minutes,