

OFFICE OF THE CITY ATTORNEY

OPINION NO. 91-04

TO: Dennis L. Frederickson, City Manager
FROM: Stephen M. Kemp, City Attorney
DATE: July 23, 1991
SUBJECT: Effect of Vacancy of Municipal Judge

QUESTION:

What is the effect if the position of Municipal Judge becomes vacant and no successor is appointed and qualified.

OPINION:

Generally, municipal officers hold over until their successors are provided. *McQuillin Municipal Corporations v.3* at 12.110. In Arizona, the Constitution provides:

§ 13. Continuation in office until qualification of successor

The term of office of every officer to be elected or appointed under this Constitution or the laws of Arizona shall extend until his successor shall be elected and shall qualify.

This provision has been further defined in statute. A.R.S. §38-295. The Courts have applied these provisions to municipal judges. *City of Tucson v. Jacobson*, 113 Ariz. 534, 558 P.2d 686 (1976)

Under these provisions a public officer "holds over" and continues to perform their duties after their term, until their successors are qualified for the office. *McCall v. Cull*, 51 Ariz. 237, 75 P.2d 696 (1938); *State v. Macias*, 162 Ariz. 316, 783 P.2d 255 (App. 1989), *Review Den.* These provisions are designed to prevent vacancies in public office.

In this case, should the Mayor and Council not appoint a Municipal Judge to fill the term beginning August 1, 1991, the current judge will hold over and perform the duties of the

Opinion No. 91-04
Page 2

position until the Mayor and Council appoint a successor and they take the oath of office.

If you should have any questions, please do not hesitate to contact me.

SMK:ei

cc: Meredith R. Flinn, Assistant City Manager

STEVEK\OPINION\91-04