

You state in your communication that some of the elected officials including some members of school boards have entered upon the duties of their office without having filed the expense statement mentioned. It may be and probably would be held that the ten day period of limitation after the election in which to file the expense statement is directory only as to time, and not mandatory, and that the expense statement might be filed after such ten day period, and before entering upon the duties of the office. However, the latter part of the section provides clearly that the officials shall not receive any salary or emolument prior to the filing of the same.

Taking this view of the case we think the two newly elected councilmen who did not file their expense statement would be authorized to file them after the ten day period, or before entering upon the duties of the office, and upon so complying and taking the oath of office would be authorized to assume the duties of their office. This would then give the newly elected council five members, and these five in turn would be authorized to fill a vacancy, if any existed in the membership of the village council.

Section 4236 G. C., which provides for filling a vacancy in a council is as follows:

“When the office of councilman becomes vacant, the vacancy shall be filled by election by council for the unexpired term. If council fail within thirty days to fill such vacancy, the mayor shall fill it by appointment.”

Clearly the mayor was without authority to “declare the three next highest candidates in said council election eligible to take the place of the three ineligible,” and he was without authority to make any appointment at that time. The three duly elected councilmen not constituting a majority could do no more than adjourn the meeting until one or both of the other elected councilmen had filed their expense statements and entered upon the discharge of their duties, when if a quorum were present, council could elect to fill the vacancy. Failing in this for thirty days, the mayor would then be authorized to fill the vacancy by appointment.

More specifically answering your question, if council does not fill the vacancy within thirty days from the second Tuesday in January, the date fixed by the by-laws of this village for installation of its officers, the mayor would then be authorized to make the appointment to fill the vacancy or vacancies.

Inasmuch as the former appointments of the mayor were unauthorized at that time, if council did not fill the vacancy or vacancies within said thirty day period, the mayor should make the appointments or reappointments after the said thirty day period had elapsed, in order that the village may have a legally constituted council.

Respectfully,

C. C. CRABBE,  
*Attorney-General.*

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1222.

APPROVAL, BONDS OF SALEM TOWNSHIP RURAL SCHOOL DISTRICT,  
WASHINGTON COUNTY, \$1,522.50, TO FUND CERTAIN INDEBTED-  
NESS.

COLUMBUS, OHIO, February 23, 1924.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*