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Mr. Knox W. Askins  
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City of La Porte  
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Election Law Opinion MAM-1  
Re: When may an election be held to fill a vacancy in the office of councilperson in a home rule city in which councilpersons have terms of more than two years.

Dear Mr. Askins:

This is in response to your July 26, 1984 letter concerning a special election to fill a vacancy in the office of councilperson in the city of La Porte.

This official election law opinion is rendered by me as chief election officer of the state in accordance with Tex. Elec. Code Ann. art. 1.03, subd. 1 (Vernon Supp. 1984).

You stated that the term of office of a councilperson in La Porte is three years. On July 19, 1984, a councilperson resigned, creating a vacancy.

The city of La Porte is a home rule city in which the charter provides for three year terms, as permitted by Tex. Const. art. XI, § 11, which provides, in pertinent part:

A municipality . . . providing a term exceeding two (2) years but not exceeding four (4) years for any of its non-civil service

officers must elect all of the members of its governing body by majority vote of the qualified voters in such municipality, and any vacancy or vacancies occurring on such governing body shall not be filled by appointment but must be filled by majority vote of the qualified voters at a special election called for such purpose within one hundred and twenty (120) days after such vacancy or vacancies occur. (Emphasis added.)

Article 2.01b of the Texas Election Code provides uniform dates for holding elections. With few exceptions, all elections are held on the four uniform dates provided by this article. Tex. Elec. Code Ann. art. 2.01b(a) (Vernon Supp. 1984). However, paragraph (e) of the same article provides:

(e) When a preexisting law requires that a special election be called within a specified time period after the occurrence of a certain event, the election shall be called for a date authorized in Subsection (a) of this article that falls within that time period; or if there is no authorized date within the period that allows sufficient time to comply with other requirements of law, the election shall be called for the first authorized date after its expiration, except that the election shall be called for some other date within the time period where the constitution requires it. (Emphasis added.)

The constitutional provision, Article XI, § 11, controls in the event of a conflict with any statute. The city of La Porte is required by Article XI, § 11 of the Texas Constitution and by its own charter to call an election to fill the vacancy within 120 days after July 19, 1984, the date the vacancy was created. Therefore, the city of La Porte may hold its election on any date before November 16, 1984, except November 6, 1984, which date is restricted to specific elections. Tex. Elec. Code Ann. art. 2.01b(c) (Vernon Supp. 1982).


You noted that Tex. S.O.S. Op. No. DAD-23 (1982) addressed a similar question. However, it is not necessary to address the question raised by that opinion. In the fact situation presented there, the constitutional deadline for holding the election to fill the vacancy had passed. Under the facts presented here, there is sufficient time to call the election within the constitutionally prescribed period.

Mr. Knox W. Askins  
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SUMMARY

Pursuant to Article XI, Section 11, Constitution of Texas, a home rule city in which the charter provides for terms of office exceeding two years must call a special election to fill a vacancy within 120 days from the date the vacancy occurs, notwithstanding the fact that no standard election date as provided by art. 2.01b occurs within that period.

Sincerely,

  
Myra A. McDaniel  
Secretary of State

Ward Allen White III  
General Counsel

Prepared by Sharon K. Hanko  
Assistant General Counsel  
Elections Division

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