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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 79-1115
of	:	December 21, 1979
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Attorney General	:	
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SUBJECT: PERIOD OF NO ELECTION—Under Government Code section 71180, the 10-month period in which no successor to an appointee to fill a municipal court vacancy may be elected begins to run from the inception of the vacancy.

The Honorable Marian Bergeson, Assemblywoman, Seventy-Fourth District, has requested an opinion of the following question:

Under Government Code section 71180, does the ten-month period in which no successor to an appointee to fill a municipal court vacancy may be elected, begin to run from the inception of the vacancy or from the date of appointment to fill the vacancy?

CONCLUSION

The ten-month period under Government Code section 71180, in which no successor to an appointee to fill a municipal court vacancy may be elected, begins to run from the inception of the vacancy rather than from the date of appointment.

ANALYSIS

Government Code¹ section 71180 provides:

“Any vacancy in the office of judge of a municipal court shall be filled by appointment by the Governor, but no vacancy shall be deemed to exist in any such office before the time fixed in Sections 71080, 71082, and 71083 for the selection of the judges of such court and the time fixed by law for their qualification. The appointee shall hold office for the remainder of the unexpired term of his predecessor and until his successor is elected and qualifies.

“If the office to which any person so appointed was not previously occupied, he shall hold office until his successor is elected at the general state election next succeeding the occurrence of the vacancy and qualifies. *No successor to such appointee shall be elected at any election held within 10 months of the date of the occurrence of the vacancy.*” (Emphasis added.)

In *Barton v. Panish* (1976)18 Cal. 3d 624, 627, the Supreme Court held that “The 10-month limitation of section 71180 is applicable not only to newly created judicial offices, but also to vacancies occurring due to the retirement or death of a judge.”

The last sentence of section 71180 clearly states that the ten-month period begins on the date of the occurrence of the vacancy. Several cases have interpreted this last sentence to mean that the ten-month period begins to run with the inception of the vacancy. (*Campbell v. Hite* (1962)57 Cal. 2d 484, 487; *Brailsford v. Blue* (1962) 57 Cal. 2d 335, 338; *Donnellan v. Hite* (1956) 139 Cal. App. 2d 43, 46.)

Such an interpretation is in accord with the clear language of the statute and with the ordinary meaning of the words used. (*Great Lakes Properties v. City of El Segundo* (1977) 19 Cal. 3d 152, 155; *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.)

We conclude that the ten-month period provided for in section 71180 begins to run on the date the vacancy occurs rather than on the date of the appointment to fill the vacancy.

¹ Unless otherwise indicated, all section references are to the Government Code.