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State of California

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OPINION	:	No. 80-212
	:	
of	:	<u>May 29, 1980</u>
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SUBJECT: ELECTION OF VACANCY—A vacancy, occurring within the year of but prior to such election of a superior court judicial office scheduled for the June 1980 election, would render any such election a nullity.

The Honorable Edmund G. Brown, Jr., Governor of the State of California has requested an opinion on the following question:

What is the effect upon an election of a vacancy, occurring within the year of but prior to such election, of a superior court judicial office scheduled for the June 1980 election?

CONCLUSION

A vacancy, occurring within the year of but prior to such election of a superior court judicial office scheduled for the June 1980 election, would render any such election a nullity.

ANALYSIS

The present inquiry is predicated upon the premise that a superior court judge who was elected to a six-year term which will expire on January 5, 1981, vacates the office in 1980 prior to the June 1980 election. Article VI, section 16(c) of the California Constitution provides:

“Terms of judges of superior courts are 6 years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge’s term begins.”

By virtue of the express constitutional terms, such vacancy shall be filled by election at the next general election after the January 1 following the vacancy. (*Fields v. Eu* (1976) 18 Cal. 3d 322; and *Cf. Zecher v. Cory* (1975) 13 Cal. 3d 743; *Anderson v. Phillips* (1975) 13 Cal. 3d 733; *Pollack v. Hamm* (1970) 3 Cal. 3d 264.) In the instant case, the next general election¹ after the January 1 following the vacancy will occur in June 1982. The term of the person elected to such office will commence on the Monday after January 1, 1983.

In view of the foregoing, any election for that office conducted in June 1980, under the circumstances presented, would be a nullity. (*Cf. Barton v. Panish* (1976) 18 Cal. 3d 624; *Morrison v. Michael* (1979) 98 Cal. App. 3d 507; unpub. opn. of Atty. Gen., No. IL 78-40.)

¹ A statewide primary election is deemed a general election for a nonpartisan office if the candidate receives a majority of the votes cast. (*Fields v. Eu, supra*, 18 Cal. 3d at p. 235, fn. 1.)