



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. A. N. Stearns
County Attorney
Atascosa County
Jourdanton, Texas

Dear Sir:

Opinion No. 0-2638

Re: Upon whom devolves the duty of making an appointment for the office of County Health Officer upon the death of the holder of such office during his two year term? And for how long shall said appointee hold the office?

Your recent letter requesting an opinion of this department states that the duly appointed County Health Officer of Atascosa County has died during the two-year term of office to which he had been originally appointed by the Commissioners' Court of the county pursuant to Article 4423, R. C.S. of Texas. In connection therewith you asked upon whom devolves the duty of making an appointment in such case and for how long shall such appointee hold office.

Article 4423 provides as follows:

"Art. 4423. COUNTY HEALTH OFFICER

The commissioners court by a majority vote in each organized county shall biennially appoint a proper person for the office of county health officer for his county, who shall hold office for two years. Said county health officer shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health; and, until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said county health officer shall be fixed by the commissioners court; provided, that no compensation or salary shall be allowed except for services actually rendered."

Hon. A. N. Steinle, Page 2

As pointed out by you this statute clearly empowers the commissioners' court to biennially appoint the county health officer but is silent both as to the filling of an unexpired term and as to the period of time such appointment, when made, shall run.

There being no other statute touching this matter, it is our opinion that the power to fill the unexpired term of one originally appointed by the commissioners' court would follow from the grant of power to make the original appointment. Clearly Article 4423 contemplates that the power of filling the office of county health officer shall reside in the commissioners court of the county; the express granting of power as to the biennial appointment would include, in the absence of other statutory provisions, the lesser power to fill the unexpired term of an original appointee of the commissioners court.

Your second question likewise involves a matter not expressly regulated by Article 4423, or by any other statute. The term "biennially" has a well defined meaning as something happening, or taking place, once in two years. *BRUCE v. MATLOCK*, 111 S.W. 990, 86 Ark. 555. Article 4423 in its provisions that the appointment of a county health officer shall be done biennially would seem to fix a term of two years as of an original appointment, regardless of intervening circumstances. This being true, it would follow that in the event of the death of the present holder of the office of county health officer, the term of office which became fixed by the action of the commissioners court in making the biennial appointment, only, is subject to being completed. At the expiration of this two-year term of office the commissioners court thereupon would make another biennial appointment in accordance with Article 4423.

Accordingly, you are respectfully advised that it is the opinion of this department that under the facts of your letter the commissioners court of Atascosa County may make an appointment to complete the unexpired term of the county health officer who has died and that such appointee may only serve during the unexpired term of the deceased.

APPROVED AUG 22, 1940

Very truly yours

Tom R. Allen
FIRST ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By *Zollie C. Steakley*
Zollie C. Steakley
Assistant

ZCS:ob

APPROVED
OPINION
COMMITTEE
BY *BWT*
CHAIRMAN