



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

September 25, 1987

James B. Weatherby
Executive Director
Association of Idaho Cities
3314 Grace Street
Boise, ID 83703

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: City Council Vacancies

Dear Jim:

In your letter of August 26, 1987, you ask several questions concerning successors in office to council members appointed to fill a vacancy. Specifically, you ask at what point is a successor elected and qualified to assume a council office when the person appointed to fill a vacancy either is defeated in the election or declines to seek election. You further ask that the answer be provided as it relates to a term which still has two years to run and to a term which expires and election is for a regular term.

Idaho Code § 50-704 provides the manner in which a vacancy to the city council is filled.

A vacancy on the council shall be filled by appointment made by the mayor with the consent of the council, which appointee shall serve only until the next general city election, at which such vacancy shall be filled for the balance of the original term.

James B. Weatherby
Executive Director
Association of Idaho Cities
September 25, 1987
Page 2

Idaho Code § 50-702 provides for the point at which councilmen elected take office: "Councilmen elected at each general city election shall be installed at the first meeting in January following election."

The general rule governing taking office upon election to fill an unexpired term is that the person who wins the election takes the office immediately upon election and qualification; generally within a reasonable time after the election. 67 C.J.S. Officers, § 79. However, where a statute provides otherwise, the person elected to fill an unexpired term takes office at the time prescribed in the statute. Id. White v. Young, 88 Idaho 188, 397 P.2d 756 (1964).

Reading §§ 50-702 and 50-704, together, it is clear that in Idaho the statutes provide a single, direct answer to the various scenarios posed in your question. Thus, a person elected to fill an unexpired term as provided by § 50-704 would assume office on the first meeting of the council in January following the election. The same would hold true for the person elected for a full term which commences in January following the election. That person also would not take office until the first meeting in January following the election.

Each of these conclusions is consistent with the holding in White v. Young, *supra*, where the Idaho Supreme Court held that a county officer will take office at the time designated by statute.

If our office can be of further assistance, please call.

Sincerely,

Daniel G. Chadwick

DANIEL G. CHADWICK
Chief, Intergovernmental
Affairs Division

DGC/mkf

cc: Michael Moore
General Counsel, A.I.C.