



KIM REYNOLDS
GOVERNOR

OFFICE OF THE GOVERNOR

ADAM GREGG
LT GOVERNOR

July 9, 2024

VIA ELECTRONIC MAIL

Executive Council of Iowa
c/o Kristi Onstot, Executive Secretary
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State Commissioner of Elections
Secretary of State Paul Pate
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State Court Administrator
Robert Gast
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Re: Judicial Nominating Commission Vacancy

Dear State Court Administrator, Members of the Executive Council, and the State Commissioner of Elections:

Governor Reynolds is in receipt of a letter issued by the State Court Administrator on June 18, 2024. Your letter seeks a determination of the status of Attorney Joslyn Sailer ("Sailer") who was elected to serve a six-year term starting February 1, 2020, on Judicial Nomination Commission for District 1B (hereinafter "District 1B"). In addition to the facts contained in your letter, this office interviewed Sailer.

Sailer moved on December 11, 2023 to premises located in Delaware County which is in District 1A. Since that time, Sailer has maintained ownership of her house in District 1B along with a P.O. Box for mail addressed to that house. The closing date on her house in District 1B is set for this week. Sailer claims she currently has dual residency in each district.

District 1B plans to meet during the week of July 22nd to nominate to persons to fill the vacancy created by the notice of resignation submitted by Associate Juvenile Justice Daniel L. Block.

The role of elected commissioners is set forth in the Iowa Constitution which, in relevant part,

provides:

There shall be a district judicial nominating commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the district court within their respective districts. . . [D]istrict judicial nominating commissions shall be composed and selected as follows: There shall be not less than three nor more than six . . . elective members on each such commission, all of whom shall be electors of the district . . . The elective members shall be elected by the resident members of the bar of the district.

Iowa Const., Art. V, §16

When the status of a judicial nominating commissioner is in question, the Governor shall be the officer responsible for deciding whether a vacancy exists. See Iowa Code §46.5(6).

Because the Iowa Constitution expressly allows additional requirements for elective members to be prescribed by law, the standard used to determine whether a vacancy exists is set forth in §69.2(1) which, in relevant part, provides:

Every civil office shall be vacant if . . . [t]he incumbent ceas[es] to be a resident of the . . . district . . . for which the incumbent was elected . . .

Cf. Hon . Roger A. Halvorson, 1979 Op. Atty. Gen. 314 (Because Constitution only had a 60-day residency requirement in the district, a statute that required an incumbent to continue to be a resident of the district after an election had no effect on the legislator's qualification for office even though legislator later moved outside the district and filed for a homestead exemption for his new home).

The first issue is whether Sailer holds a "civil office" pursuant to § 69.2(1)(c). "A civil office is a grant and possession of the sovereign power, and the exercise of such power within the limits prescribed by the law which creates the office constitutes the discharge of the duties of the office." *State v. Spaulding*, 102 Iowa 639, 72 N.W.288, 289 (1920).

Sailer has been granted the power outlined in Article V of the Iowa Constitution and Iowa Code Chapter 46, which enabled her to vote for the nominees to fill a district court vacancy. See *Welty v. McMahan*, 316 N.W.2d 836, 838 (Iowa 1982) (applied "civil office" provision when determining the status of state judicial nominating commissioner). For this reason, Sailer holds a "civil office" under Iowa Code §69.2(1)(c).

The next question is which *district* Sailer was elected serve: Judicial District 1 or Judicial Nominating District 1B. As indicated, Sailer's new house is in Delaware County which is in Judicial District 1.

The sentence in Article V of the Iowa Constitution that addresses elected membership uses the term "judicial election district." Additionally, the Legislature has vested the Supreme Court with authority to establish the division of the state into judicial districts and judicial election districts. See Iowa Code §§602.6107(1), 602.6109 (1). Thus, there is a clear difference in the Constitution and Code Chapter 46 between a judicial district and a judicial nominating district. In determining the intention of the legislature, the object sought to be attained can be considered. See Iowa Code §4.6(1). Here, the object to be attained by use the term "district" in Section 69.2 in this context is

that such term means the judicial election district—District 1B.

The final issue is whether Sailer *ceased* to be a *resident* of District 1B under Iowa Code § 69.2(1)(c). The duty of an elected member of District 1B is to vote on nominees to fill a vacant judgeship. While Sailer now owns a house outside District 1B, Sailer has expressed an intention to continue to be a resident of District 1B until the sale of her house in District 1B.

It is recognized that the elective embers do not *represent* the people of Iowa, they *serve* the people of Iowa. *Carlson v. Wiggins*, 7650 F. Supp. 2d 811, 826 (S.D. Iowa 2011) (elective members have no constituencies, so they are not representative in the sense of reflecting or responding to the views of a public; instead, the elective members provide legal expertise to the commission's nomination process); see also *Independent School Dist. of Manning, Carroll County v. Miller* 189 Iowa 123, 178 N.W.323, 326 (1920) (individual who held office of school treasurer and permanently, not temporarily, moved outside of the district where duties were to be performed and did so without having any intention to return was deemed to have changed residence for purposes of predecessor statute to Iowa Code § 69.2(1)(c)); *Mauk v. Lock*, 70 Iowa 266, 30 N.W. 566, 567 (1886) (where supervisor of road district did not move, but boundaries of such district changed, and duties were deemed to be local to the district boundaries, the civil office was deemed vacant because the individual ceased to reside in the district in which the duties of office were to be exercised).

Based on these authorities and a lack of evidence to the contrary, it is determined that Sailer continues to be a resident of District 1B.

The next question is *when* the vacancy will arise. Iowa Code 46.5(3) ("[t]he special election shall be completed within ninety days of the vacancy *arising*.").

The word "arise" means "[t]o originate; to stem (from)." *Cubit v. Mahaska County*, 677 N.W.2d 777,783 (Iowa 2004) *citing Black's Law Dictionary* 102 (7th ed.1999); *Lane v. Travelers Ins. Co.*, 230 Iowa 973,259 N.W.553, 555 (1941) (the word "arising," according to dictionaries, means "originating" or "coming into being.").

Under these facts, the vacancy originates or stems from the point in time that Sailer sells her house in District 1B.

Sincerely,



Stan Thompson
Senior Legal Counsel

cc: Joslyn Sailer
The Honorable Chief Judge Lekar, District 1B Judicial Nominating Commission