



State Court Administration

Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, IA 50319

Robert Gast
State Court Administrator

Ross Loder
Deputy State Court Administrator

May 15, 2024

Governor Kim Reynolds
c/o Steven Blankinship, Senior Legal Counsel
Steven.blankinship@governor.iowa.gov

Executive Council of Iowa
c/o Victoria Newton, Executive Secretary
Victoria.Newton@tos.iowa.gov

VIA EMAIL

Re: 2B District Judicial Nominating Commissioner

Dear Governor Reynolds and Members of the Executive Council:

As State Court Administrator, I have certain statutory duties set forth in Chapter 46 of the Iowa Code relating to the elections of judicial nominating commissioners. In addition, district court judges serve as chairs of the district judicial nominating commissions pursuant to Iowa Code section 46.6(2).

Thomas Hillers is an elected judicial nominating commissioner in Judicial Election District 2B serving a term that expires on January 31, 2030. He was recently appointed as a Magistrate. Before assuming office, magistrates subscribe and file an oath of office pursuant to Iowa Code section 602.6403.

Magistrate Hillers may be ineligible to continue serving as a commissioner under the Iowa Constitution. If the Magistrate position is considered an “office of profit” of the state, he would be ineligible to serve as both a commissioner and a Magistrate. *See* Iowa Const. art. V, § 16 (“Appointive and elective members of judicial nominating commissions . . . shall hold no office of profit of the United States or of the state during their terms . . .”).

Attorney General Opinions construing this provision have concluded that a certified court reporter held an “office of profit,” and the office of City Attorney and a county commission were

both “offices of profit.” The individuals at issue were ineligible to serve on the district judicial nominating commission. 1963 WL 113598 (Sept. 19, 1963), 1965 WL 158533 (June 24, 1965). A more recent Attorney General Opinion on incompatibility of offices decided that the position of assistant county attorney is one of employment and is not a “public office.” Att’y Gen. Op. No. 91-7-2, 1991 WL 495671 (July 25, 1991). We note that the Governor’s Senior Legal Counsel recently evaluated the “office of profit” issue in a letter of February 19, 2024, with regard to a different commissioner. The analysis in that letter noted the five elements required by most courts to make a public employment a public office, as set forth in *Vander Lynden v. Crews*, 205 N.W.2d 686, 688 (Iowa 1973).

Because the status of the Commissioner is in question, I am referring this matter to both the Governor and the Executive Council for a decision on the eligibility of Thomas Lee Hillers to serve the remainder of his term as a judicial nominating commissioner in Judicial Election District 2B. I will leave it to your determination as to the appropriate entity to make the decision. *See* Iowa Code § 46.5(6) (“All judicial nominating commissioners, including those elected by the bar, shall be subject to removal by the executive council in the same manner as appointive state officers under section 66.26. When the status of a judicial nominating commissioner is in question, the governor shall be the officer responsible for deciding whether a vacancy exists under section 69.2.”).

If you determine that the Commissioner is ineligible and a vacancy exists in Judicial Election District 2B, we stand ready to administer a special election to fill the remainder of the term. The special election “shall be completed within ninety days of the vacancy arising.” Iowa Code § 46.5(3). If you determine that a vacancy exists, please also determine the date the vacancy arose so that we may calculate the timeline. *See* Iowa Code § 69.2. If we use the date of the appointment (April 26), we must complete the election by July 25, 2024. If we use the date the Magistrate took office (May 13), we must complete the election by August 11, 2024.

As you know, SF 2096 will go into effect on July 1, 2024, striking subsection (2) (the gender requirement) in Iowa Code section 46.4 regarding elected district judicial nominating commissioners. Either way, it is our belief that we should apply the July 1, 2024 amendment to this special election and not include any gender requirement. Please let us know if you disagree.

If you have any further questions, please do not hesitate to let me know.

Sincerely,



Robert Gast

CC: Thomas Lee Hillers
The Honorable Chief Judge Kester, Chair, District 2B Judicial Nominating Commission

Certification of Magistrate Appointee

**To: Chief Judge Adria A. Kester
Clerk of the District Court**

The magistrate appointing commission for Marshall County met on April 26, 2024, and, pursuant to Iowa Code section 602.6403(5), hereby certifies the name and address of the appointee to the clerk of the district court and the chief judge of the judicial district as follows:

THOMAS LEE HILLERS
(Name of appointee)

STATE CENTER - MARSHALL COUNTY IOWA
(Address of appointee)

Dated April 26, 2024

John J. Hancy

1/3/ K.F.'s G. CHRIST - Dull by A.H.H.
Remote Authority

EF Bill

Billy McLebber

Magistrate Appointing Commission for Marshall County

Original to Chief Judge
Copy to Clerk of Court
Copy to Court Administrator