

Filling vacancies, when officer begins serving

Number: INFORMAL

Date: May 11, 2011

Mr. Clifford B. Shepard
Maitland City Attorney
2300 Maitland Center Parkway
Suite 100
Maitland, Florida 32751

Dear Mr. Shepard:

The Office of Attorney General Pam Bondi has received your letter requesting the opinion of this office regarding an interpretation of the city charter. Specifically, you request whether an individual elected to fill a vacancy on the city council may begin serving upon election or must wait until the fourth Monday in April.

As discussed in this office's statement regarding Attorney General Opinions, a copy of which is enclosed for your review, opinions of this office generally are not issued on questions requiring an interpretation only of local codes, ordinances or charters rather than the provisions of state law. Such requests are referred to the attorney for the local government in question.

In an effort to be of some assistance, however, I would generally note that Article II, section 2.06(c) of the charter appears to be a method of addressing vacancies on the city council by providing that the vacancy on the council shall be filled by a successor appointed by the remaining members of the city council who serves until the next general election at which time "there shall be elected a city council member *for the balance of the unexpired term.*" (e.s.) Article II, section 2.01(c) of the charter provides that the term of office for city council members is three years, beginning from the fourth Monday in April of the year elected. This section of the charter appears to relate to the terms of office, when they begin and end, and not to the filling of vacancies. The individual filling the vacancy is not serving a three year term which begins in April, but rather is serving only the balance of an existing term which already began on the fourth Monday in April in the year when the vacated council member was elected. Cf. Attorney General Opinion 2010-51, stating that the expiration of a term of office is not one of the specified circumstances under which a "vacancy" occurs in that office.

I trust you will understand that the duties of this office are prescribed by law. I hope, however, that the above informal observations may be of assistance.

Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson

Assistant Attorney General

JW/tsh

Enclosure: Statement Policy