



TO: Alderman Matthew Petty
Alderman Justin Tennant
Alderman Adella Gray

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

DATE: March 7, 2013

RE: Filling vacancies on the A P Commission

In response to your questions concerning the statutorily required procedure to fill vacancies on the A & P Commission, I need to quote from A.C.A. §26-76-605(d):

“Whether resulting from the expiration of a regular term or otherwise, a **vacancy** on the commission ... shall be filled by appointment made by the remaining members of the commission, with the approval of the governing body of the city.” (emphasis added).

This requires an **actual vacancy must have occurred** rather than just be anticipated. Once a position is actually vacant, it “shall be filled by appointment by the remaining members of the commission, with the approval of the (City Council).”

Therefore, the A & P Commission may not anticipate a vacancy and vote to appoint a replacement before the vacancy actually exists. Nor could any commissioner vote to appoint someone to succeed himself or herself on the A & P Commission.

Attached is Alderman and Commissioner Petty’s suggested procedure to replace commissioners which follows the law with the minor exception that it should state in 7a “if **approved** ...” and in 7b “if **not approved** ...”

A&P Appointment Procedure

26-75-605. Advertising and promotion commissions.

...

(d) Vacancies on the commission, whether resulting from expiration of a regular term or otherwise, in any of the four (4) tourism industry positions provided for in subdivision (a)(1) or in the at-large position provided for in subdivision (a)(3) shall be filled by appointment made by the **remaining** members of the commission, with the approval of the governing body of the city.

(Emphasis added.)

Suggested procedure beginning 2013

- 1 A&P Commission notifies City Clerk of a [pending] vacancy.
- 2 City Clerk is the custodian of all applications.
- 3 City Clerk/Nominating Committee advertises the vacancy.
- 4 Nominating Committee interviews applicants.
- 5 Nominating Committee nominates applicants and sends nominations to the A&P Commission.
- 6 A&P Commission considers all nominations and makes appointment. A&P Commission sends appointment to City Clerk for consideration by the City Council.
- 7 The City Council considers the A&P Commission's appointment.
 - a If accepted, no further action is required. The appointed individual is now an A&P Commissioner.
 - b If rejected, the Nominating Committee will send a second nomination to the A&P Commission without conducting further interviews.