

THE SUPREME COURT OF MINNESOTA

JUDICIAL PLANNING  
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M E M O R A N D U M

TO: Chief Justice Douglas K. Amdahl  
FROM: Michael Johnson *MJ*  
DATE: March 13, 1986  
SUBJECT: AVOIDANCE OF SUNSET AND TRANSFER BY "RETIRING" JUDGES

**SUMMARY**

In regard to the retirement of trial court judges, you asked me to determine whether the so-called sunset and transfer law, Minn. Stat. § 2.722, subd. 4, applies to the situation in which a judge in effect "retires" by choosing not to seek reelection or withdrawing from an election rather than by submitting a written application for retirement to the governor. My research indicates that although the sunset and transfer law controls the determination of when a vacancy occurs, it was not intended to increase situations in which a vacancy would have occurred prior to its adoption. Assuming that at least one qualified individual becomes a candidate for the incumbent judge's position, wins the general election, and swears the oath of office, no vacancy would have occurred under prior law and therefore the sunset and transfer law would be inapplicable.

**DISCUSSION**

"Whenever there is a vacancy in the office of judge the governor shall appoint in the manner provided by law a qualified person to fill the vacancy...." Minn. Const. art. VI, § 8. The determination of when a judicial vacancy occurs was recently set forth by the legislature as follows:

Determination of a judicial vacancy. When a judge of the district, county, or county municipal court dies, resigns, retires or is removed from office, the supreme court, in consultation with judges and attorneys in the affected district, shall determine within 90 days of receiving notice of a vacancy from the governor whether the vacant office is necessary for effective judicial administration. The supreme court may continue the position, may

order the position abolished, or may transfer the position to a judicial district where need for additional judges exists, designating the position as either a county, county/municipal or district court judgeship. The supreme court shall certify any vacancy to the governor, who shall fill it in the manner provided by law.

1985 Minn. Laws 1st Sp. Sess. c. 13, § 58 (codified as Minn. Stat. § 2.722, subd. 4 (Supp. 1985)).

This statute, commonly known as the sunset and transfer law, does not define the term "retires," and the meaning is not clear from the context. Normally, a judge retires by making a written application to the governor for retirement. Minn. Stat. §§ 490.025, subd. 1 (supreme court justice); 490.101, subds. 1, 2 (district court judge); 490.11 (probate judge); 490.124, subd. 2 (early retirement; all judges and justices); 490.126, subd. 2 (all judges and justices) (1984). A judge who does not retire voluntarily (e.g., upon reaching the mandatory retirement age) may be retired by order of the supreme court. Minn. Stat. § 490.126, subd. 1 (1984); R. Bd. Jud. Standards 14 (West 1986).

There are no provisions, however, that permit the supreme court to direct the retirement of a judge upon the judge's failure to become a candidate or his withdrawal from an election. Moreover, there are no provisions that describe this conduct as "retirement" or indicate that it creates a vacancy in the office. Compare Minn. Stat. §§ 204B.03-204B.13 (nomination and candidacy requirements; filling vacancies in nominations), with Minn. Stat. § 352.02 (1984) (listing eight events that create vacancies in office)(the authority of the governor to fill vacancies in judicial offices requires that the provisions in § 352.02 and those in c. 204B be mutually exclusive, see State ex rel. Hennepin County Bar Ass'n. v. Amdahl, 264 Minn. 350, 362-363, 119 N.W.2d 169, 176-177 (1962) (death of incumbent judge created vacancy in office, which governor shall fill by appointment); Nelson v. Quie, 299 N.W.2d 119, 120 (Minn. 1980)(retirement of incumbent judge-- i.e. by application to the governor--which becomes effective prior to the election obviates the need for an election)).

Where, as here, the words of a law are not explicit, the intent of the legislature may be ascertained by considering, among other matters: the occasion and necessity for the law; the mischief to be remedied; and the former law, including other laws on the same subject. Minn. Stat. § 645.16. The former law includes the statutory provisions discussed in the preceding paragraphs. As noted above, neither the failure to become a candidate nor withdrawal from an election creates a vacancy in the office. Assuming that a successor is subsequently chosen and qualifies, the office would change hands naturally as if the incumbent had lost the race by forfeiture or waiver.

The last time the legislature enacted a sunset provision occurred in 1982 when the court of appeals was created. The applicable provision states:

Office of Associate Justice; Continuance in Office. The reduction of two offices of associate justice abolished by section 480.01 shall become effective upon the first two vacancies occurring in that office on the supreme court. Each justice of the supreme court serving on August 1, 1983 may continue to serve until he is not elected or he does not seek reelection. If a justice who was serving on August 1, 1983 is defeated for reelection by another person, that other person shall be deemed to have been in office as of August 1, 1983, for the purposes of this section.

Minn. Stat. § 480.011 (1984). Arguably, a position would appear to be abolished pursuant to this provision whenever a justice failed to seek reelection. The argument will never be tested, however, as the positions have already been abolished; one by retirement (upon application to the governor), and the other by resignation. Assuming that the argument is correct, section 480.011 is distinguishable from the sunset and transfer law as the former discusses elections and seeking reelection while the latter does not.

In regard to the occasion and necessity for the sunset and transfer law, the law was enacted as part of the state departments appropriation measure, 1985 Minn. Laws 1st Sp. Sess. c. 13. The single largest item in the judicial branch budget is the expenditure for trial court judges. See Id., §§ 3-7 (\$15,387,500 compared to \$3,597,000 for supreme court operations and \$2,963,000 for the court of appeals). Thus, there was a clear need to reduce the number of trial court judges, where possible, to help reduce the high cost of providing those judges.

In regard to the mischief to be remedied, the legislature is unable to abolish or transfer judicial positions efficiently, due to the short, discontinuous legislative sessions and constitutional limitations. See Minn. Const. art. VI, § 4 (district court positions may not be abolished during a judge's term). In contrast, there is no evidence that trial court judges were avoiding retirement by application to the governor and instead opting for retirement by failing to become a candidate or withdrawing from election. To believe that judges would begin to avoid retirement by application to the governor once the sunset and transfer law went into effect requires too many coincidences: a judge's physical and mental health, the level of benefits desired, and the impending abolition or transfer of the position must converge on a window of time that opens once every six years. Moreover, a provision for extending a term up to three years can remove the

trouble of facing reelection merely to qualify for maximum retirement benefits. See Minn. Stat. § 490.124, subd. 2. It should be noted that this extension procedure results in a vacancy by retirement that would trigger the sunset and transfer law. See id.

Based on the above discussion on the prior law, the occasion and necessity for enactment of the sunset and transfer law, and the mischief to be remedied by the enactment, it would be reasonable to conclude that the legislature did not intend that the sunset and transfer law should apply to a judge who decides not to seek reelection or withdraws from an election. It is reasonable to conclude that the only change to prior law brought about by sunset and transfer is that it in effect controls the timing of a vacancy long enough to permit the supreme court to determine whether or not the judicial position in question is needed for efficient judicial administration.

#### CONCLUSION

Although the sunset and transfer law controls the determination of when a vacancy occurs, it was not intended to increase the situations in which a vacancy would have occurred prior to its adoption. Assuming that at least one qualified individual becomes a candidate for the incumbent judge's position, wins the general election, and swears the oath of office, and assuming that the incumbent does not formally retire by application to the governor, no vacancy would have occurred under prior law and therefore the sunset and transfer law would be inapplicable.

MBJ:blm