

COUNTY OFFICER:

Removal of a coroner from one county to another. He can continue to hold office.

January 25, 1938

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Mr. W. P. Wilkerson,
Prosecuting Attorney,
Scott County,
Sikeston, Missouri.

Dear Sir:

This is to acknowledge receipt of your letter of January 17, 1938 asking for an official opinion, which letter reads as follows:

"It appears that the coroner of Scott County has moved out of the county, and that five or six would be office holders are bringing pressure on the County Court to have them take steps to remove the said coroner so that one of them can be appointed to the office. The County Court has asked me whether the removal of this officer from the county constitutes grounds for removing him from the office, it being conceded that he has in no way failed to perform any of his official duties unless it be that his removal across the line into an adjoining county constitutes a failure to perform an official duty.

I am frank to say that I have found no satisfactory answer to the question, and hence I pass it on to you. Has the coroner made himself liable to removal from office because of the fact that he has moved his residence across the line into Mississippi County, it being conceded that he has never at any time failed to perform or neglected any official duties?"

For the qualifications on eligibility of public officers in Missouri, we must look to the Constitution and the statutory provisions therefor. Section 10, article 8 of the Constitution of Missouri makes the following limitations:

"No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment."

The Constitution of the State of Missouri in Section 10, article 9 provides for the election of the sheriff and coroner and reads as follows:

"There shall be elected by the qualified voters in each county on the first Tuesday next following the first Monday in November, A. D. 1908, and thereafter every four years, a sheriff and coroner. They shall serve for four years and until their successors be duly elected and qualified, unless sooner removed for malfeasance in office. Before entering on the duties of their office, they shall give security in the amount and in such manner as shall be prescribed by law, and shall be eligible only four years in any one period. Whenever a county shall be hereafter established, the Governor shall appoint a sheriff and coroner therein, who shall continue in office until the next succeeding general election and until their successors shall be duly elected and qualified."

You will notice in this section that the only qualifications or limitations set out are for malfeasance in office, and the requirement of a bond.

Section 11 of article 9, Constitution of Missouri sets out a vacancy in the office of coroner may be filled and reads as follows:

"Whenever a vacancy shall happen in the office of sheriff or coroner, the same shall be filled by the county court. If such vacancy happen in the office of sheriff more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same,

and the person by it appointed shall hold office until the person chosen at such election shall be duly qualified; otherwise, the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified. If any vacancy happen in the office of coroner, the same shall be filled for the remainder of the term by such county court. No person elected or appointed to fill a vacancy in either of said offices shall thereby be rendered ineligible for the next succeeding term."

You will notice that this section of the Constitution does not require residence in the county.

In an early case in Missouri State ex rel. Attorney General v. Woodson, 41 Mo. 227, l.c. 230, the court said:

"The power of the state to declare in its fundamental law, or, when that is silent upon the subject, by legislative enactment, what shall constitute the test of eligibility to office is as clear and unquestioned as is the power to fix the qualifications of voters."

The state may fix the qualifications of those who shall hold state offices, and subject to such limitations as may be imposed by the State Constitution, such power may be exercised by the state legislature. 46 Corpus Juris, page 936. And at page 938, Section 35 of the same text, it is said:

"In the absence of a constitutional or statutory provision residents within the district of which the jurisdiction of the officer extends is unnecessary to eligibility."

In Mechem on public officers, Section 438, page 280, it is said:

"Where the law thus requires the officer to reside within the district which he represents, and a fortiori so where it expressly declares that his removal from the district shall create a vacancy,

a permanent removal from the district represented will be deemed an abandonment of the office and a vacancy will result."

And conversely where the law does not require one to reside in a district, a removal of an officer does not create a vacancy in the office.

As to the election of coroners the state legislature in Section 10167 R.S. Mo. 1929 legislated how the coroner should be elected. This section reads as follows:

"On the first Tuesday after the first Monday in November, in the year 1880, and every two years thereafter, there shall be an election held in each township in this state, and in each ward of the city of St. Louis, for the election of a member of congress from each congressional district, of senators and representatives in those districts and judges of the county courts in those counties where the term of those elected has expired, and for sheriffs and coroners, and such other officers as may be required by law to be elected at such elections."

You will notice that in this section it does not require and does not set out that the coroner should be a resident of the county wherein he was elected.

The legislature has only created two sections in the Missouri Statutes which would cause a vacancy in the office of the coroner. One of the sections is section 11611 R.S. Mo. 1929 which reads as follows:

"If a coroner neglect to give bond and qualify within twenty days after his election, or shall fail to give bond when required under the preceding section, his office shall be deemed vacant."

The other section is 11635 which reads as follows:

"Any coroner who shall knowingly charge to any person, or present to the county court for allowance, any items of fees,

costs and expenses not authorized by law, or for any service not actually performed, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall forthwith be removed from office. Such removal shall be declared in the judgment for such misdemeanor, and thereupon the office of such coroner shall be declared vacant, and his successor appointed according to law."

It does not set out in either one of the two sections 11611 and 11635 that the grounds for vacancy would be removal from the county.

Section 6, article 14 of the Constitution of Missouri provides as follows:

"All officers, both civil and military, under the authority of this State, shall, before entering on the duties of their respective offices, take and subscribe an oath, or affirmation, to support the Constitution of the United States and of this State, and to demean themselves faithfully in office."

and Section 7 of article 14 of the Constitution of Missouri provides as follows:

"The General Assembly shall, in addition to other penalties, provide for the removal from office of county, city, town and township officers, on conviction of willful, corrupt or fraudulent violation or neglect of official duty. Laws may be enacted to provide for the removal from office, for cause, of all public officers, not otherwise provided for in this Constitution."

By an examination of the statutes of Missouri, specific qualifications are required before one may hold certain offices and it is provided in some cases that officers must be residents of township, county or district from which they were elected or appointed, and in other cases residence is not a pre-requisite

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to the holding of the office. In the case of the coroner, there is no pre-requisite that he be a resident of the county, but if he should violate any of the facts above set out which would cause a vacancy in the office, it would be necessary to file a separate action to try him under the merits of his particular case.

CONCLUSION

In view of the fact as set out in your letter that it is conceded that the coroner of Scott County has never at any time failed to perform nor neglected any of his official duties, and that he has moved his place of residence across the county line into Mississippi County, Missouri, he is still the coroner of Scott County. I am assuming from your letter that he is still a resident of the State of Missouri and that he has performed all of his duties as set out in your letter.

It is, therefore, the conclusion and the opinion of this office that until his term, for which he was elected, expires, he is the legal coroner of Scott County notwithstanding the removal of his residence from Scott County to Mississippi County, Missouri.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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