

LEGISLATORS HOLDING OFFICE OF RECORDER OF DEEDS: A member of the General Assembly may not be appointed to office of Recorder of Deeds during the term for which he is elected to the General Assembly.

October 23, 1941

16-24



Hon. Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri

Dear Governor Donnell:

This is in reply to your letter of recent date in which you request an opinion from this department on the question of whether or not a member of the General Assembly may be appointed to the office of Recorder of Deeds during the term for which such person is elected to the General Assembly.

Section 18 of Article 4 of the Constitution, pertaining to this question, provides as follows:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office under this State, or any municipality thereof; and no member of Congress or person holding any lucrative office under the United States, or this State, or any municipality thereof (militia officers, justices of the peace and notaries public excepted), shall be eligible to either house of the General Assembly, or remain a member thereof, after having accepted any such office or seat in either house of Congress."

By this section it will be seen that a member of the General Assembly may not be appointed to an office under this State during the term for which he is elected. If the office of the Recorder of Deeds is an office under this State, a member of the General Assembly could not be appointed to that office during the term for which he is elected.

Article 1, Chapter 89, Sections 13147 to 13160, contains the statutory provisions relating to the Recorder of Deeds. It will be noted that this Article provides for the election of a Recorder of Deeds; it fixes his term of office, his qualifications, and requires him to give a bond for the faithful performance of his duties, and that his position is referred to as an office. Other sections of the

statutes pertaining to the Recorder of Deeds provide that such office shall have a seal, has authority to administer oaths, is required to record certain instruments for which a fee may be charged, and is required to make settlement with the County Court, and in case there is a surplus of fees, the Recorder is then required to turn these fees into the County Treasury.

In the case of *Hastings v. Jasper County*, 314 Mo. 144, 149, the court said:

"A public office is defined to be 'the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be by him exercised for the benefit of the public.' (*Mechem, Public Officers*, 1; *State ex rel Walker v. Bus*, 135 Mo. 325.) * * The authorities all agree, substantially, that if an officer receives his authority from the law and discharges some of the functions of government, he will be a public officer."

In the case just quoted from the court held a probation officer to be a public officer of his county, though not a State officer, saying on page 150:

"The right, authority and duty are created by statute; he is invested with some portion of the sovereign function of the government to be exercised for the benefit of the public and is consequently a public officer within the definition given by this court."

The term "office under this State" is also in Section 12 of Article 6 of the Constitution of Missouri, pertaining to the jurisdiction of the Supreme Court in certain cases. The meaning of this term has been construed by courts in a number of cases in which the jurisdiction of the Supreme Court was questioned. In *State ex inf. Barrett v. Parrish, et al*, 307 Mo. 455, 457, the Court in discussing this term, said:

"Section 12 of Article VI of our Constitution provides that the Supreme Court shall have jurisdiction on appeal in all cases involving 'the title to any office under

this State.' See also the following authorities: State ex inf. Thompson v. Bright, 298 Mo. l. c. 345, 250 Mo. 599 and cases cited; State ex inf. West v. Consolidated School District, 290 Mo. l. c. 138-9, 234 S. W. 54; State ex inf. Barker v. Smith, 271 Mo. 168, 196 S. W. 17; State ex inf. Wright v. Morgan, 268 Mo. 265, 187 S. W. 54; Ramsey v. Huck, 267 Mo. l. c. 336, 184 S. W. l. c. 968; State ex inf. Sutton v. Fasse, 189 Mo. 532."

And, in State ex rel Davidson v. Caldwell, 310 Mo. 397, 406, the Court said:

"I. The construction of this constitutional provision, so far as concerns the character of the office involved, has been comprehensive as well as liberal. It has been held to apply to a State Board of Equalization (State ex rel. Gardner v. Hall, 282 Mo. 425); to a clerk of a circuit court (State ex rel. Blakemore v. Rombauer, 101 Mo. 499); to members of a school board (State ex rel Macklin v. Rombauer, 104 Mo. 619); to school directors (State ex inf. Sutton v. Fasse, 189 Mo. 532); to a county collector (Sanders v. Lacks, 142 Mo. 255); to a township trustee and collector (Macrae v. Coles, 183 S. W. (Mo.) 578); to a justice of the peace (Ramsey v. Huck, 267 Mo. 333); to a grain inspector (State ex rel. v. Knott, 207 Mo. 167); to a member of a county highway board (State ex rel. v. Morehead, 256 Mo. 683.) These rulings are determinative of the question of jurisdiction. So far as the character of the office is concerned, if it is one to which the officer has been elected or appointed under the authority of the law and requires the performance of duties prescribed by law, it is such an office as is meant by the Constitution. (State ex rel. Zevely v. Hackmann, 300 Mo. 59, 254 S. W. 53; State ex rel. v. Bus, 135 Mo. 331.)"

It will be noted that the Blakemore case cited above that the Clerk of the Circuit Court is an officer under this State and that the Supreme Court has jurisdiction over such office.

Hon. Forrest C. Donnell

-4-

October 23, 1941

Our statutes provide that in certain counties the Clerk of the Circuit Court may be Ex-officio Recorder of Deeds.

In view of the authorities hereinbefore referred to, we do not think that there is any doubt that the office of Recorder of Deeds is an "office under this State."

CONCLUSION

From the foregoing, it is the opinion of this department that a member of the General Assembly, during the term for which he has been elected, may not be appointed to the office of Recorder of Deeds, or any other county office.

Respectfully submitted,

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APPROVED:

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