

OFFICERS:

Legislature can terminate any office that it creates.

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February 26, 1941

Honorable Roy Hamlin  
State Representative  
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of February 12, 1941, which reads as follows:

"I contemplate introducing a bill to amend Section 8011, page 675, Laws of 1939, by repealing the last proviso thereof. Will you please advise me whether, if this amendment is made, the added compensation of the surveyor for services as ex officio county highway engineer as now provided in said proviso will, as of the effective date of said amendatory act, be terminated, or whether the surveyors who went into office January 1, 1941, in counties between 20,000 and 50,000 inhabitants, will continue to receive such added compensation until the end of their present terms."

I presume you refer to the following proviso:

"\* \* Provided, further, after January 1, 1941, that in all counties in the state which contain, or which may hereafter contain not less than twenty thousand inhabitants or more than fifty thousand inhabitants the county surveyor shall be ex-officio

county highway engineer, and his salary as county highway engineer shall not be less than twelve hundred dollars per annum, nor more than two thousand dollars per annum as shall be determined by the County Court."

There is no question but that when the Legislature creates an office it may also dispense with an office. If the amendment described by you is made, the salary of the surveyor for services as ex officio county highway engineer ceases at the time the amendment goes into effect. That the Legislature may dispense with an office which it has created was held in the case of State v. Hedrick, 241 S. W. 402, 1. c. 413, par. 11, where the court said:

"It is also held in several decisions that if the Legislature is empowered to create an office, it may provide for removal from that office as it wills. 'In creating an office the government can impose such limitations and conditions with respect to its duration and termination as may be deemed best, and that in such a case the incumbent takes the office subject to the conditions which accompany it.' In re Carter, 141 Cal. loc. cit. 320, 74 Pac. 998; State v. Houston, 94 Neb. loc. cit. 453, 143 N. W. 796, 50 L. R. A. (N.S.) 227. Even in case a 'Constitution creates an office but makes no provision for the period of its term or method of removal from it, the power of the Legislature to act in the public interest in these respects is well settled.' Op. of Justices, 117 Mass. 603; Wales v. Belcher, 3 Pick. (Mass.) 508; Op. of Justices, 216 Mass. Loc. cit. 606, 104 N. . 847.

"In case the Legislature is invested with power to provide the mode of filling, fix the term and prescribe the duties of such officers, it necessarily follows it may, in its discretion, not only discontinue them altogether, but determine the manner and by what tribunal an incumbent may be removed." *Hoke v. Richie*, 37 S. W. 84, 18 Ky. Law Rep. loc. cit. 524. With respect to the office of police commissioner of Denver it was held in *Trimble v. People*, 19 Colo. loc. cit. 196, 34 Pac. 981, 41 Am. St. Rep. 236, that the Legislature had the power to create the office, provide the method of filling it, and the manner of removal from it. In *Attorney General v. Tufts (Mass.)* 131 N. E. loc. cit. 575, 17 A. L. R. 274, the court re-affirmed the doctrine announced in *Opinion of Justices*, 216 Mass. 605, 606, 104 N. E. 847, and quoted with approval from *Graham v. Roberts*, 200 Mass. 152, 157, 85 N. E. 1009, 1011:

"Where an office is created by law, and one not contemplated, nor its tenure declared by the Constitution but created by law solely for the public benefit, it may be regulated, limited, enlarged or terminated by law, as the public exigency or policy may require."

"The court also said:

"Even where the Constitution creates an office but makes no provision for its terms or the method of removal of its incumbent, the General Court may act in these particulars in the public

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interests. It may establish any rational means of removal from such office for any just cause.'

"In *Caldwell v. Wilson*, 121 N. C. loc. cit. 470, 23 S. E. 554, it was held that the Legislature in creating the office of railroad commissioner had authority to reserve to itself the power to remove, and to the Governor the power to suspend such official."

#### CONCLUSION

In view of the authority of the above case it is the opinion of this department that the Legislature may amend Section 8011, page 675, Laws of Missouri 1939, by repealing the last proviso thereof and the added compensation for the services of surveyor as ex officio county highway engineer as now provided in said proviso which applies to counties of not less than twenty thousand or more than fifty thousand inhabitants will terminate on the effective date of the amendment.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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