

COUNTY CLERKS AND DEPUTIES: TERMS OF APPOINTMENT: The county clerk may revoke appointment of deputy county clerk.

November 26, 1941



Mr. Walter C. Hotaling  
Attorney at Law  
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Dear Mr. Hotaling:

This is in reply to your letter of recent date wherein you request an opinion from this department based on the following statement of facts:

"I should like the opinion of your Department on the following situation.

"A County Clerk appoints a deputy, which appointment is approved by the County Court, by an order which recites that said appointment is to continue during the term of the County Clerk.

"Subsequently, the County Clerk wishes to discharge this deputy. However the deputy contends that his appointment is coextensive with the term of the County Clerk.

"The question is, is such an appointment at the pleasure of the County Clerk or is it irrevocable."

Under the provisions of 13299, R. S. Mo. 1939, county clerks are authorized to appoint deputies. This section provides as follows:

"Every clerk may appoint one or more deputies, to be approved by the judge or judges, or a majority of them in vacation, or by the Court, who shall be at least 17 years of age and have all the other qualifications of their principals and take the like oath, and may in the name of their principals, perform the duties of clerk; but all clerks and their sureties shall be responsible for the conduct of their duties."

This section of the Statutes does not define the term or length of time for which a deputy may be appointed. But in the case of Horstman v. Adamson, 101 Mo. App. 119, the Court held that a contract between a clerk of a County Court and his deputy, that the latter was to remain as deputy for the entire period that the clerk held the office, was void as against public policy. In that case the Court said:

"The rule is well established that an appointment to office for a definite term confers upon the incumbent the right to serve out the full official period, unless forfeited by misconduct, for the permanence of the official tenure negatives the authority of the appointing power of removal at will. But where the law conferring the authority under which the appointment is made is silent as to any limitation of the right of removal, and the official term is unlimited, the absolute power of removal is an incident to the power of appointment, to be invoked and applied at pleasure, without notice, and without legal liability for the results. These principles have been frequently recognized in numerous decisions, alike by the Federal Courts, as well as by the courts of many states including our own. (Citing cases)"

This rule is also announced in the case of State ex rel Mincke et al vs. Sartorius, 95 S. W. (2d), 1. c. 875.

The fact that the deputy was appointed in this case "during the term of the County Clerk" would lead one to believe that there was a contract entered into between the clerk and his deputy. However, public office and compensation therefor are not matters of contract, and even though they meant to enter into one, it would be void, being against public policy.

In the case of Motley v. Callaway County, 149 S. W. (2d) 875, 1. c. 876 the Missouri Supreme Court announced the rule on this question as follows:

"\* \* \* \* It is true that under the monarchical form of government, in the early development of the common law in England, 'public offices were regarded as incorporeal hereditaments and subjects of private property.' 46 C. J. 932, sec. 28; see also 22 R. C. L. 376, sec. 7. But under our form of government an office is 'a privilege in the gift of the state and depends upon the favor of the people'; and it 'is a public trust' because 'it is created in the interest and for the benefit of the public.' 22 R.C.L. 376-378, secs. 8-10. It is not (or the compensation thereof) a subject of grant or contract of any person or officer. \* \* \* \* "

In Vol. 11, C. J., p. 972 the rule as to the term of office is stated as follows:

"If a statute providing for the appointment for deputy or assistant clerks of courts fails to define the period for which they shall hold office, they hold only during good behavior."

This rule we think would apply to deputy county clerks.

In the case of State ex rel Mincke et al vs. Sartorius 95 S. W. (2d) 1. c. 875, the court in speaking of the right of a circuit judge to remove a deputy probation officer and answering the contention that they could only be removed by proceeding under the statute, said:

"We think relators clearly misconceive the applicability of such Statutes to their case. Conceding that, because of the functions they serve within restricted territorial limits, they are to be classed as 'public officers' and as 'county officers' within the meaning of the law (Hastings vs. Jasper County, 314 Mo. 144; 282 S. W. 700), yet it does not follow that the matter of their removal from office is necessarily to be governed by Sections 11202, and 11203 (R. S. 1929, now sections 12, 828, and 12,829, supra.) This for the reason that those sections of the Statutes are purely general in their nature, and have to do with the subject of

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removal from office of the several classes of officers specified therein servng terms of office which are definitely defined by law. \* \* \* where the law conferring the authority under which the appointment is made is silent as to any limitation upon the right of removal and the duration of the official term is thus left unlimited except by the will and pleasure of the appointing power, then under such circumstances, the unqualified power of removal is incident to the very power of appointment itself, which may be invoked and applied at pleasure without notice, the making of charges or a hearing thereon. (Citing cases)"

#### CONCLUSION

From the foregoing, it is the opinion of this department that the term of an appointment of a deputy county clerk is at the discretion of the county clerk and such deputy may be discharged at any time during that term.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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(Acting) Attorney General

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