

OFFICERS:
ASSESSORS:
COMPENSATION:
COUNTY OFFICERS:

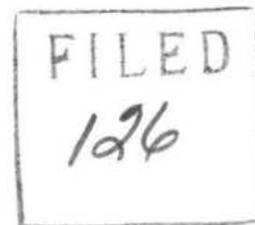
A county assessor appointed by the Governor to fill a vacancy in the office is required to take an oath of office as provided in Section 11, Article VII, Constitution of

Missouri, and qualifies for the office as provided under Chapter 53, RSMo, and that he is not entitled to the emoluments of the office until he qualifies.

OPINION NO. 126

April 5, 1973

Honorable John W. Reid, II
Prosecuting Attorney
Madison County
148 East Main Street
Fredericktown, Missouri 63645



Dear Mr. Reid:

This is in response to your request for an opinion from this office as follows:

"Which one of the following dates does the pay of the assessor appointed by the Governor to fill the unexpired term of the elected assessor (who died in office) begin:

1. The date stated in the Governor's Commission, February 5, 1973.
2. The date the Governor signed the Commission, February 21, 1973.
3. The date the appointed assessor took the oath of office, February 26, 1973.

"The elected assessor of Madison County, Missouri, Harold O. Shrum died on February 3, 1973. On February 21, 1973, the Governor of the State of Missouri appointed H. Latt Bennett assessor of Madison County, Missouri and stated his term of office began on February 5, 1973. On February 26, 1973, H. Latt Bennett took the oath of office of assessor of Madison County, Missouri."

In substance you inquire whether the pay of the assessor appointed by the Governor to fill the unexpired term of an elected

Honorable John W. Reid, II

assessor, who died in office, begins on the date the Governor signed the commission, the date stated in the Governor's commission as to the beginning of the term, or the date the appointed assessor took the oath of office.

Article VII, Section 11, Constitution of Missouri, provides as follows:

"Before taking office, all civil and military officers in this state shall 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."

Chapter 53, RSMo, provides that there shall be elected a county assessor in each county of the state who shall hold office for a term of four years and until their successors are elected and qualified, unless sooner removed from office.

Section 53.030, RSMo, provides as follows:

"Every assessor shall take an oath or affirmation to support the Constitution of the United States and of this state, and to demean himself faithfully in office and to assess all of the real and tangible personal property in the county in which he assesses at what he believes to be the actual cash value. He shall endorse this oath on his certificate of election or appointment before entering upon the duties of his office."

The office of county assessor is created by statute and the person holding the office comes within the constitutional provision as well as the statute which implements the constitutional provision.

Our court has held this constitutional provision applies to deputy constables, *State v. Dierberger*, 2 S.W. 286 (Mo. 1886); judge of the probate court, *State ex rel. Gott v. Fidelity & Deposit Co. of Baltimore, Md.*, 298 S.W. 83 (Mo. 1927); mayor and board of aldermen of a city, *State ex rel. City of Clarence v. Drain*, 73 S.W.2d 804 (Mo. banc 1934).

In *state ex inf. McKittrick v. Langston*, 84 S.W.2d 131 (Mo. banc 1935), the court held that the local registrar of vital statistics was entitled to continue in office after his successor's appointment until successor qualified by taking the oath required by the Constitution. In discussing this question, the court stated, l.c. 132:

Honorable John W. Reid, II

". . . As John W. Williams was appointed to an office 'under the authority of this state,' it became a constitutional prerequisite to his entering upon the duties of his office that he comply with the requirements of section 6 of article 14 of the Constitution of Missouri which ordains that '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.' Since there is no showing that John W. Williams ever qualified as local registrar of vital statistics for the 318th registration district of Missouri, it is clear upon authority that the respondent as incumbent of the office was entitled to continue in office pending the qualification of his successor. Constitution of Missouri, art. 14, § 5; State ex rel. Robinson v. Thompson, 38 Mo. 192; State ex rel. v. Smith, 87 Mo. 158; State ex rel. v. Gray, 91 Mo. App. 438; State ex rel. v. Jenkins, 43 Mo. 261."

The legal right to the office carries with it the right to the salary, Davenport v. Teeters, 315 S.W.2d 641 (Spr.Ct.App. 1958). The right to the compensation begins when the officer qualifies, McQuillin - Municipal Corporation, 3rd Edition, Section 12.175 and State ex rel. Robinson v. Auditor, 38 Mo. 193 (1866).

Under the above authority, it is our opinion that the tenure of the county assessor appointed by the Governor to fill a vacancy does not begin until he takes the oath of office and qualifies by giving bond as provided in the Constitution and statute. It is our opinion he is not entitled to compensation until he qualifies for the office.

CONCLUSION

It is the opinion of this office that a county assessor appointed by the Governor to fill a vacancy in the office is required to take an oath of office as provided in Section 11, Article VII, Constitution of Missouri, and qualifies for the office as provided under Chapter 53, RSMo, and that he is not entitled to the emoluments of the office until he qualifies.

Honorable John W. Reid, II

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General