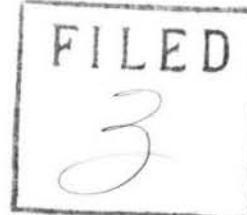


STATE BARBERS BOARD: Salary of retiring Board ends
July 7, 1933

September 6, 1933.

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Hon. Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Mr. Smith:

This office is in receipt of your letter of August 16, 1933 in which you request an opinion from this department as to the following state of facts:

"I have presented for payment the July expenses and July salaries of both the retiring members of the State Barbers Board and the new members.

The commissions of the new members issued by the Governor were all dated June 30, 1933. The new members qualified by taking their oath of office on July 7, 1933.

My office would appreciate an opinion as to whether both the old board and the new board could legally draw salary for services during the same time. Also, whether both boards could draw travelling expenses for the same period.

The appropriation made by the Legislature for the Barbers Board is contained in Sec. 4, page 92 of the 1933 Missouri Laws."

Section 13523, R.S. Mo. 1929 provides, in so far as it is pertinent, as follows:

"A board of examiners, to consist of three persons, citizens of this state for at least three years prior to their appointment, is hereby created to carry out the purposes and to enforce the provisions of this chapter. Such board shall be appointed by the Governor, by and with the advice

and consent of the senate: Provided, that all members must have had a practice of at least five years at the said occupation prior to their appointment. Each member of said board shall serve for a term of four years and until his successor is appointed and qualified.

Sec. 5, Art. XIV of the Constitution of the State of Missouri provides as follows:

"In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."

In the case of State ex rel v. Thompson, 38 Mo. 193, the Court held that by virtue of the Constitution the Superintendent of Public Instruction was continued in office until his successor was appointed or elected and qualified. The Court said:

"When the plaintiff's successor was duly appointed and qualified, his term expired, and not before." (Emphasis ours)

In the case of State ex rel, The Attorney General v. Ranson, 73 Mo. 78, the Court said:

"The first question is, what constitutes, under the law, the official term of justices of the peace? The statute in force now and when respondent was elected and qualified, provides that: 'Justices of the peace are to be commissioned by the county court, and shall hold their office for four years, and until their successors are elected and qualified.' The constitution of the State-- 5th section, 14th article--declares that: 'In the absence of any contrary provision, all officers now or hereafter elected or appointed, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified.' The stipulation of the parties shows that at the November election in 1876, the respondent was duly elected, commissioned and qualified as a justice of the

peace within and for Kaw Township, in Jackson County, Missouri, for the period of four years, and until his successor was duly elected or appointed and qualified. It would seem from this that the period of four years, and whatever time thereafter may elapse before the election or appointment and qualification of his successor, constitutes the official term of justices of the peace. ****"

From a consideration of these cases it may be seen that the term of office of a public officer elected or appointed to hold office for a definite period, and until his successor is appointed or elected and qualified, expires at the time of the qualification of such successor.

This principle of law is announced by Judge Arnold of the Kansas City Court of Appeals in the case of State v. Brown, 274 S.W., 965, l.c. 967:

"The law is well settled that, where a public officer is elected or appointed to hold office for a definite period, and until his successor is appointed or elected and qualified, failure to appoint or elect a successor at the end of such period does not work a vacancy. State ex rel. Lusk, 18 Mo. 333; State ex rel. Stevenson v. Smith, 87 Mo. 158. It follows that the incumbent properly holds until his successor is elected or appointed and qualified, and it is then only that his term expires. State ex rel. Robinson v. Thompson, 38 Mo. 192; State ex rel. Ranson, 73 Mo. 78."

It is a well recognized rule of law that the right of a public officer to the salary of his office is a right created by law and is incident to the office; it does not have a contractual basis, nor is it dependent upon the fact or value of services actually rendered.

In the case of King v. Riverland Levee District, 279 S.W. 195, 218 Mo. App. 490, the Court said: (L.c. 196)

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. State ex rel Evans v. Gordon, 245 Mo. 12

loc. cit. 27, 149 S.W. 638; Sanderson v. Pike County, 195 Mo. 598, 93 S.W. 942; State ex rel Troll v. Brown, 146 Mo. 401, 47 S.W. 504. Furthermore, our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel Wedeking v. McCracken, 60 Mo. App. loc. cit. 656, to the effect that the rendition of services by a public officer is to be deemed gratuitous unless a compensation therefor is provided by statute, and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation, or to any different mode of securing the same. State ex rel Evans v. Gordon, supra. "

Therefore, in view of the foregoing, it is the opinion of this department that the term of office of the retiring members of the State Barbers Board expired July 7, 1933, at the time the new members qualified by taking their oath. The salary and expense appropriation being incident to the office, the retiring members of the State Barber Board can not legally draw any salary or travelling expenses for the period subsequent to July 7, 1933.

Respectfully submitted,

JOHN W. HOFFMAN, Jr.,
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General

JWH:AH