

JUSTICE OF THE PEACE must be elected at a general election of county officers held each four years from 1882. Sec. 2136, 2138, 2140, 2144, R.S. Mo. 1929.

January 13, 1933



Hon. Joseph M. Bone, Jr.
Prosecuting Attorney
Mexico, Missouri

Dear Sir:

I acknowledge receipt of your letter of January 4, 1933, which reads as follows:

"Prior to the last six years there has been three Justice of the Peace at Mexico, Salt River Township, Audrain County. There are at present two Justice of the Peace. S.A. Weaver of Mexico, Mo., asked for an appointment to fill the vacancy of the third place for Justice of the Peace, which the County Court did not do. Weaver filed his declaration of intention as a candidate and received the nomination at the August primary. His name was placed upon the ballot for the general election and he was duly elected. The County Court has not issued a commission to him as Justice of the Peace, for the reason that they think the application and election and entire procedure is not proper.

"Under Sec. 2140 R.S. of Mo., 1929, it would seem that his election is proper and that he should be commissioned as a Justice for a two year term, until the next general election which is the regular time for electing Justice of the Peace under Sec. 2136 and 2138 of the R.S. of Mo., 1929. The only case relating to the appointment or election of Justices that might have some bearing on the construction of the statutes in question is the case of State Ex Rel Walker vs. Powles, 136 Mo. 376 lc. 380, 381.

"I would appreciate your opinion as to the regularity of the above election of S.A. Weaver, so that I might further advise with the County Court on this matter."

Sec. 2136, R.S. Mo. 1929, provides that in municipal townships containing an incorporated town or city of over 2,000 inhabitants, and less than 10,000 inhabitants, said town shall be entitled to an additional Justice of the Peace, etc.

Sec. 2138, R.S. Mo. 1929, provides:

"Justices of the peace, as herein provided for; shall be elected at the general election, to be held in eighteen hundred and eighty-two, and shall hold their offices for four years, or until their successors are elected, commissioned and qualified; but every justice of the peace now in office shall continue to act as such until the expiration of his commission, and until his successor is elected and qualified."

Sec. 2140, R.S. Mo. 1929, provides:

"When a vacancy occurs in the office of justice of the peace, the county court of the county in which such vacancy occurs may supply the same by appointment of some person competent and qualified, who shall hold his office until the next general election of county officers, and until his successor is elected, commissioned and qualified."

Sec. 2144, R.S. Mo. 1929, provides:

"Justices of the peace are to be commissioned by the county court, and shall hold their offices for four years, and until their successors are elected and qualified."

In the case of *State ex rel Walker, Attorney-General, vs Powles*, 136, Mo. 376, the Attorney-General instituted a proceeding by quo warranto to oust the respondent from his office of Justice of the Peace of Howell township, Howell County, Missouri. The respondent answered that he was appointed August 9, 1889, by the County Court as Justice of the Peace for the City of West Plains under what is now Sec. 2138, R.S. Mo. 1929.

The facts were that on August 9, 1889, Powles was appointed by the County Court for Howell township, to serve until the next general election of county officers, or until his successor was elected, commissioned and qualified. Powles served in this capacity until 1892. That on November 14, 1892 in pursuance to an election held November 8, 1892, the County Court commissioned Powles a Justice of the Peace for a term of two years, and until his successor was elected, commissioned and qualified. The next general election, November 6, 1894, three residents of the City of West Plains were elected Justices of the Peace for Howell township, in accordance with what is now Sec. 2136, R.S. Mo. 1929.

The court, after citing the sections herein referred to, stated on page 381:

" *** The first general election of county officers and Justices of the Peace occurring after the appointment of the respondent, by the County Court, was in November, 1890, at which a successor to the respondent might have been elected, upon whose qualification, the term of the respondent would have ceased. But it seems that no successor was chosen at that election, and as the respondent under his appointment by the County Court, was authorized to hold and exercise the functions of said office, not only until the next general election of county officers, but until, 'his successor was elected, commissioned and qualified.' He thereafter continued lawfully the incumbent to said office and was authorized to exercise the functions thereof, until a successor for him should be chosen for him at the next general election of county officers and Justices of the Peace in November, 1894. State ex rel vs Ranson, 73 Mo. 78. *** "

" *** As there was no law in force authorizing the election of a Justice of the Peace in 1892, the respondent acquired no title to that office by virtue of that election, *** Judgment of ouster will therefore be entered against the respondent and writ issued accordingly. All concur."

The foregoing case is the last expression of the Supreme Court on this matter, therefore, there is no "two-year term" for a Justice of the Peace, or that any justice can obtain a valid title to the office of the Justice of the Peace at any election of county officers except such an election as is held every four years subsequent to 1882. The general election of 1932 was not such an election, while it is true that it was a general election of county officers under a select definition of that term, it was not an election of Justices of the Peace under the Justice of the Peace statute. The term of the office of Justices of the Peace is four years, and under the statutes above cited, the four years shall run from a definite date to a definite date, State ex rel vs Spitz, 127 Mo. l.c. 252:

"The scope and purpose of the statute was to secure uniformity both in the date of their election, and in the term of their office."

In view of the foregoing authority, the election referred to in your inquiry was irregular and that the county court is acting properly in refusing to issue the commission.

Yours very truly,

H. G. WALTNER, JR.
Assistant Attorney-General

Approved:

ROY McKITTRICK
Attorney-General

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