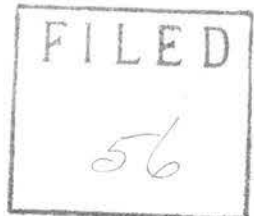


March 31, 1933.



Hon. Ira A. McBride  
Supervisor  
State Building and Loan Associations  
Jefferson City, Missouri

Dear Mr. McBride:

Replying to your letter of March 30th, which is as follows:

"Mr. George W. Wagner retiring Supervisor, State Building and Loan Associations, and now President of the Farm and Home Savings and Loan Association of Nevada, Missouri, filed his resignation with Governor Guy B. Park, effective March 30, 1933.

On March 22 Governor Park announced my appointment to the position of Supervisor of State Building and Loan Associations succeeding Mr. Wagner. My confirmation, however, by the State Senate, was not made until March 29, 1933.

Please advise me as to the date in which Mr. Wagner's pay stops and mine begins. There is no controversy about this matter, but I am merely asking for the opinion to make sure that this matter is handled in the correct way."

I beg leave to advise that Sec. 5, Art. XIV, of the Constitution of Missouri provides,

"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."

Sec. 6, Art. XIV, of the Constitution of Missouri provides,

"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."

Construing these two constitutional provisions, it would appear that the office of supervisor would not become vacant until a successor had been appointed and qualified to assume the duties thereof, and that the incumbent would hold until his successor should be appointed and qualified, even though such period was beyond the date fixed for the effectiveness of his resignation.

In the case of *State ex rel v. Seay*, 64 No. 89, the court writing the opinion states,

"The law abhors vacancies in public offices, and great precautions are taken to guard against their occurrence. The policy of the law is to have someone always in place to discharge the duties of public offices, and in a doubtful case the construction of a law fixing the tenure of an office would be greatly influenced by that consideration."

In 22 R. C. L. Sec. 258, in commenting upon the purpose and effect of authorization to hold over, we find this language:

"The purpose of constitutional or statutory provisions authorizing public officers to hold over is to prevent a hiatus in the government pending the time when a successor may be chosen and inducted into office. Where a constitutional or statutory provision exists permitting or commanding an incumbent of an office to continue in the discharge of his duties until his successor is qualified, the expiration of the official term not only does not create a vacancy, but the period between the expiration of his term and the qualification of his successor is as much a part of the incumbent's term of office as the fixed statutory period. This is true even where a person is elected his own successor. \* \* \* \* The practical effect of a constitutional provision directing that public officers should hold over until their successors are qualified is that a public office does not actually become vacant in the sense that there is no incumbent to fill it except in the case of death. Nevertheless it has been said that when the legal term expires, the office becomes vacant in one sense, and the incumbent is authorized to continue in the discharge of his functions until the appointment and qualification of his successor by sufferance rather than from any intrinsic title to the office (Citing *State v. Williams* 222 No. 368.)"

March 31, 1933.

We are of the opinion that your salary as Supervisor would begin upon the date of your qualifying to assume the duties of this office, that is, upon the date of your taking the oath of office and the filing of such bond, if any, as may be required in connection with said office.

Sec. 13, Art. II, of the Constitution of Missouri, provides as follows:

"That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging."

You do not state upon what date Mr. Wagner, the retiring Supervisor, became President of the Farm and Home Savings and Loan Association of Nevada, but we assume that it was upon the date that he requested that his resignation should become effective. If the duties of Mr. Wagner as president of this institution required such portion of his time as to materially interfere with the discharge of his duties as supervisor, and such employment as president was remunerative to him, under this constitutional provision he would not have been entitled to continue as an official under his appointment but would have been subject to ouster proceedings for the causes hereinabove suggested.

Absent any affirmative showing, as above suggested, and upon the reasoning and authority hereinabove set forth, we are of the opinion that Mr. Wagner would draw salary as Supervisor until the time that you qualified to assume the duties of this office.

Yours very truly,

CARL C. ABINGTON  
Assistant Attorney-General.

APPROVED: \_\_\_\_\_

ROY McFITTRICK  
Attorney-General.

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