

OFFICERS--In view of Section 11202, county officer may not be removed except for neglect of duty, as specified in Section 11202; mere arbitrary removal or for cause not specified therein would be illegal.

10-23
October 20, 1933.



Mr. C. M. Reid,
113 Madison Avenue,
Aurora, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"We have a situation in Lawrence County with reference to our County Physician that I would like to explain to you and see if you could advise some method for it to be corrected.

At the present time we have Dr. Fulton, a republican, who was appointed in January 1932, by a republican County Court and his salary put at \$1000.00 per year in February of the same year. If he visited the County Farm or the County Jail he was paid for his visit in addition to his regular salary.

The present County Court claims they are willing to make a change if they could get rid of Dr. Fulton but on account of him being appointed for three years he can not be removed.

It so happens that I am Chairman of Relief for Lawrence County and I have been trying to get the Court to divide this thousand dollars and give some medical relief in different parts of the County. If they could remove Dr. Fulton or cut his salary to \$1.00 per year the balance of the \$1000.00 could be used for medical relief and the man who was appointed to take the place of Dr. Fulton could handle the health work at a great deal less than the amount they are paying him.

The present court is democratic and believe they would do what you say in reference to this, as Dr. Fulton is doing no good and never has. This is the first time in a long while that we have had charge of the court and it is a shame to let this man draw this salary for doing practically nothing. Will you please advise."

Section 9025, R. S. Mo. 1929, provides as follows:

"At the first regular February term of the county court

in each county of the state after this article becomes effective and at the regular February term of said county court every third year thereafter said court shall appoint a reputable physician as a deputy state commissioner of health for that county for a term of three years.* **

Under the foregoing section the county court of your county appointed the present deputy commissioner of health for a term of three years. When the physician accepted the appointment and qualified thereunder, he became the duly qualified and acting deputy commissioner for a period of three years, which is the term of office as provided by the statute. Such being true, the county court cannot arbitrarily or capriciously remove this physician from office. He may be removed as any other county officer for neglect of duty or for other good cause.

Section 7 of Article XIV of the Constitution of Missouri provides as follows:

"The General Assembly shall, in addition to other penalties, provide for the removal from office of county, city, town and township officers, on conviction of willful, corrupt or fraudulent violation or neglect of official duty. Laws may be enacted to provide for the removal from office, for cause, of all public officers, not otherwise provided for in this Constitution."

Pursuant to the above constitutional provision the Legislature has enacted Section 11202, which is a part of Article II, chapter 68 of the Revised Statutes of Missouri, 1929. Said section provides as follows:

"Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner hereinafter provided."

The balance of this chapter provides for a hearing before the Circuit Judge to determine whether or not the individual has violated said section. According to the constitutional and statutory provisions above quoted, an officer may be removed for willful violation or neglect of official duty or for his failure to do or perform any official act. The sections of the statute which authorize the county court to appoint the deputy health commissioner made no provision whatever for his

removal. There is no special section in the statute which would give the county court authority to remove this official. The section of the statute which authorized the appointment for a definite term of three years not having given to the county court the right to removal, and there being no special section in the statutes which gives them that arbitrary power, the right to removal must be determined according to Section 11202, above quoted.

In State ex rel. v. Morehead, 256 Mo. 683, 691, it is said:

"No particular statutory method has been provided, however, for the removal of members of county highway boards, and a reference to the general statute in regard to the removal of county, town and township officers is necessary to determine where the authority lies and what facts will sustain such a proceeding. Without literally quoting the general statute it will suffice to say that while broader than the constitutional provision (Sec. 7, Art. 14, supra) it limits the causes of removal to dereliction of or willful refusal to perform official duty, and requires the proceedings to be commenced and heard in the circuit court.

In the absence, therefore, of particular statutes, the method prescribed and the reasons assigned in section 10204 et seq., supra, are the limits of authority for the removal of members of any of the classes of officers therein specified. Members of county highway boards being public officers are properly designated as one of such statutory classes, and, therefore, subject to the provisions of the general statute in regard to removal. Their terms are definitely defined by law, and their duties are all of a public nature, and, while the statute is silent in regard to the subject, their removal will not be justified unless in each instance notice of proceedings therefor is given them, and they are afforded an opportunity to be heard in their own behalf; or, in other words, as elaborately and learnedly discussed in State ex rel. v. Sheppard, 192 Mo. 497, they cannot be deprived of their offices without resort to the forms of the law."

In view of the foregoing statutes and decisions, we are of the opinion that the deputy state commissioner of health may be removed for cause in a proper proceeding in the Circuit Court whenever such officer has violated the provisions of Section 11202, R. S. Mo. 1929. If such officer is not guilty of the violation of Section 11202, he may not be removed for any other reason or arbitrarily or without cause.

In answer to your inquiry, therefore, it is our opinion in the absence of any facts stated in your inquiry showing that the deputy state commissioner of health has neglected his duty in violation of Section 11202, we do not believe that the County court may remove him arbitrarily, or because of their desire to

Mr. G. M. Reid,

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make a change in this office. If he has violated Section 11202 in the performance of his duties, a proceedings may be brought against him for his removal, at which time he is entitled to a hearing.

Very truly yours,

A handwritten signature in cursive script, reading "Frank M. Hayes". The signature is written in dark ink and is positioned above a horizontal line.

Assistant Attorney General.

APPROVED:

Attorney General.

FWH:S