

(An opinion on question of whether present county treasurers are eligible as candidates for office of county collector in election of 1934.)

FILED

1-31
Jefferson City, Mo.
January 25th, 1934

Hon. Walter W. Biehle
Treasurer of Perry County
Perryville, Missouri

Dear Sir:

I have your letter of January 15th 1934 in which you inquire as follows:

"Will a present County Treasurer be allowed to run for County Collector in this coming campaign? What procedure will follow in the event of an election? Could both offices be combined to become effective as of January 1st 1936 such as is outlined to take place on January 1st 1937? I shall appreciate your opinion on these questions."

Within your inquiry is found three questions, which may briefly be stated as follows:

- (a) Are present County Treasurers, eligible candidates in their respective counties for office of County Collector, in election of 1934?
- (b) If qualified and elected what would be the effect?
- (c) Could offices be combined to become effective January 1st 1936.

We will take up these questions for solution in the order named, however it is rather difficult to take the first and second separately, so we will treat them together.

- (a) Are present County Treasurers eligible candidates in their respective counties, for office of county collector, in election of 1934?
- (b) If qualified and elected what would be the effect?

Article II Section 19 of the Constitution of Missouri provides as follows:

"That no person who is now or may hereafter become collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all public money for which he may be accountable."

The above section of the Constitution, clearly makes a person, who is now or may hereafter become a collector or receiver of public money, ineligible to hold any office of trust or profit in this State, until he shall have accounted for and paid over all public moneys for which he may be accountable. In as much as a county treasurer comes under that class he would therefore be ineligible. The question thus arises as to when an accounting must take place.

In State ex. rel. Major v Breuer 235 Mo. 240, the Court has constructed the word 'eligible' to refer not to time of election or appointment but to the time of the actual qualification and taking office. Judge Valliant in said case said:

"The word 'eligible' in reference to a candidate for public office, is not always used by law writers with the precise point in view, that is presented by the learned counsel for the relator in this case, that is whether it means eligible at the date of the election or appointment, or at the date of taking possession of the office. It may sometimes be used in reference to the one date and sometimes to the other and whether the reference is to the one or the other depends on the context in which the word 'eligible' is used in Section 19 of Article II of the Constitution, and of the particular subject to which it relates, I am satisfied that it refers to the date that the candidate is to take possession of the office."

In view of the provisions of the Constitution referred to above, and the Court's construction, thereof we rule that present county treasurers are qualified candidates for county collector, however before they or anyone of them if elected to such office, could qualify, they or either of them so qualifying would necessarily have to resign the office of treasurer, and account for and pay over to his successor all the public money for which he may be accountable before taking office of collector.

(c) Could offices be combined to become effective January 1st, 1935?

Section 12132a, Laws 1933 page 338, provides as follows:

"On and after the expiration of the term of office of the county treasurer on the 31st day of December, 1936, in all counties of this state which now or hereafter have a population of less than 40,000 inhabitants according

to the last decennial United States census and not under township organization, the county collector shall take over all the duties now performed by the county treasurer and such collector shall be county collector and ex officio county treasurer and shall perform any and all duties now devolving upon the county collector and county treasurer. Such collector shall act as ex officio treasurer and perform the duties attached thereto with no additional remuneration other than such moneys as are allowed by law for his services as county collector, and he shall not be required to give any bond other than the bond given as county collector. All duties and obligations now imposed by law upon county treasurers in counties having a population of less than 40,000 inhabitants according to the last decennial United States census are hereby set over and made a part of the duties and obligations of the ex officio county treasurer as provided for in section 12132a."

We construe the above section to mean that the law goes into effect on December 31st, 1936, and not before. It might be contended that the law is to become effective on the happening of the contingency of the present county treasurer ending his personal term by death, resignation or otherwise, but we do not so interpret the meaning. The limitation set by the date above mentioned must be considered. It is a well established law in this state that in construing a statute effect must be given to every word, clause and sentence within such statute; and that no part shall be considered meaningless.

In *exparte Andrews*, 18 S W (2d) 1. c. 582, this Court said:

"The legislative intention is to be ascertained from the words used in a statute. Another rule of construction is that effect is to be given to every word, clause and sentence within a statute."

Also in Cook v Sears, Roebuck and Co. 51 S W (2d) 1. c.
this Court said:

"In considering this statute as amended we are bound to give effect to all the provisions thereof and so to rule, if possible that no part is destroyed or made meaningless by the construction of other parts."

In view of the reasoning of the appellate court in the foregoing cases, this department rules that the office of county treasurer and county collector are separate and distinct county offices, under the terms of said section 12132a (Supra) until December 31st 1936.

Very truly yours,

W. W. Barnes
Assistant Attorney General

APPROVED

Attorney General