

COUNTY SURVEYORS - Vacancy in office for failure to give bond
within 60 days.

3-22

March 19, 1934.



Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

We have your request of March 15, 1934, for an opinion based upon the following facts in a letter addressed to you by Mr. Tipton, County Clerk, Lancaster, Missouri:

"I am writing you at the request of George Grist who was duly elected to the office of County Surveyor in November 1932. His Commission was sent to this office along with the others at that time, but he never qualified or gave bond at the time. Later on April 4th, 1933 he filed his bond and the County Court would not approve it on account of the lapse of more than 60 days from the time his commission was received. Now he wants the Governor to send a commission and he wants to re-file his bond, which I think is contrary to law, and qualify for the office at this late date. I would appreciate it if you would give me your opinion on this, and if in your opinion he could qualify at all now."

The County Surveyor is elected for a term of four years, and under the provisions of Section 11571 R. S. Mo. 1929 this election falls in the presidential year.

Section 5, Article 14 of the Missouri Constitution provides:

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"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."

Section 11573, R. S. Mo. 1929 provides:

"Every county surveyor shall, within sixty days after receiving his commission, and before entering upon the duties of his office, * enter into bond to the state of Missouri."

Section 11574, R. S. Mo. 1929 provides:

"If any county surveyor fail to give such bond in the time prescribed in the preceding section, his office shall be vacant."

It therefore appears from the above sections that the Legislature has provided a different tenure of office for the surveyor, and creates a vacancy in the office automatically upon the failure of the newly elected surveyor to give a bond within 60 days after receiving his commission.

It is, therefore, the opinion of this office that a vacancy exists in the office of surveyor of Schuyler County, Missouri. This vacancy is to be filled by appointment by the Governor under the provisions of Section 10216, R. S. Mo. 1929 which provides:

"Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any * county office originally filled by election by the

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people, other than * representative, sheriff or coroner, such vacancy shall be filled by a appointment by the governor; and the person appointed shall, * continue in such office until the first Monday in January next following the first ensuing general election - at which said general election a person shall be elected to fill the unexpired portion of such term,"

The Governor now has authority to appoint a surveyor of Schuyler County to hold office until January 1935, and in the meantime it becomes the duty of the voters in Schuyler County to elect a County surveyor at the coming 1934 general election.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McRITTRICK
Attorney General

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