

COUNTY OFFICERS: - SHALL FORFEIT OFFICE AND BE REMOVED, WHEN?

3-26

March 21, 1934.



Honorable J. J. De Vereaux
Mayor
Warrenton, Missouri

Dear Sir:

This department wishes to acknowledge your enclosed clippings and letter of March 15, 1934, which reads as follows:

"Regarding case of Judge Louis Bolm, of Warren Co. I am enclosing clippings from the Warrenton, Mo. Banner to substantiate my statements made in a communication Feb. 22, 1934. to the Honorable Governor Guy B. Park. I believe that they will constitute sufficient proof that a vacancy exists. I might suggest to your office that you write the County Clerk, on unofficial stationery, and ask where you could get in touch with Judge Bolm, either by mail or for personal interview, and I am sure he will give you his St. Louis address as his permanent abode. If you feel that this evidence is not sufficient, I shall be pleased to furnish your office with the names of leaders of both parties, that you may interrogate."

The enclosed clippings read as follows:

"For Rent -- My home place in Truesdale; will rent whole house or several rooms, -- Louis Bolm, 1718 North Union Blvd., St. Louis or see Robert Bolm, Truesdale. "

and

"TRUESDALE -- * * * * Judge Bolm and daughter, Mrs. Elmer Gruene-waelder, and Mrs. Lulu Marie, came Monday from St. Louis, to spent several days while Judge Bolm attended court."

Section 2073 of the Revised Statutes of Missouri, 1929, providing for the election and tenure of presiding judges of the County Courts reads as follows:

"At the general election in the year eighteen hundred and eighty, and every two years thereafter, the qualified voters of each of said districts shall elect a county court judge, who shall hold his office for a term of two years and until his successor is duly elected and qualified; and at the general election in the year eighteen hundred and eighty-two, and every four years there-after, the presiding judge of said court shall be elected by the qualified voters of the county at large, who shall hold his office for the term of four years and until his successor is duly elected and qualified. Each judge elected under the provisions of this article shall enter upon the duties of his office on the first day of January next after his election."

Section 1824, R. S. Mo., 1929, prescribing the qualifications of judges reads in part as follows:

"Every judge of the supreme court and of the several courts of appeals shall be a citizen of the United States, not less than thirty years old, and shall have been a citizen of this state five years next preceding his election or appointment, and shall be learned in the law. Every judge of the circuit court shall be not less than thirty years of age, shall have been a citizen of the United States for five years, a qualified voter of this state for

three years next before his election or appointment, and shall be learned in the law. Every judge of probate and of county court shall have attained the age of twenty-four years, and shall have been a citizen of the United States five years, and shall have been a resident of the county in which he may be elected for one year next preceding his election;
* * * *"

Section 7, Article XIV. of the Constitution of Missouri, deals with the removal from office of county, city, and all public officers and reads 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."

Section 11202, R. S. Mo. 1929, providing when an officer shall forfeit office and be removed, reads as follows: "

"Any person elected or appointed to any county, city, town or township office in this state, except 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."

Mechem on "Public Officers", Section 437, states

"As has been seen in an earlier section, it is usually provided that public officers shall reside in the district for and from which they are elected, and the statutes generally provide further that the office shall become vacant upon their ceasing to reside within said district. The reasons for these provisions are found in obvious requirements of public policy."

Section 438 of the same work states:

"Where the law thus requires the officer to reside within the district which he represents, and a fortiori so where it expressly declares that his removal from the district shall create a vacancy, a permanent removal from the district represented will be deemed an abandonment of the office and a vacancy will result.

"But a mere temporary removal for a limited time and with no intention to abandon or surrender the office or to cease to perform its duties, will not have this effect."

Section 439 of the same work reads as follows:

"Thus, where a county officer leaves the county with his family with the intention not to return, or goes to another State with the intention of there making it his home or voluntarily enlists in the military service of the United States, he is held to have vacated his office; but a mere temporary absence, as to procure medical treatment, or to engage in business for a limited time, or to fill a temporary appointment, where the office may be and is filled by a deputy, does not operate to vacate it."

In Yonkey v. The State, 27 Ind. 236, l.c. 240, the court sets out Section 6 of the VI. Article of the Constitution of Indiana providing that,

"all county, township and town officers shall reside within their respective counties, townships and towns, and shall keep their respective offices at such places therein, and perform such duties, as may be directed by law."

The court, in applying the facts to the above section states further:

"If, then Yonkey, in December, 1863, ceased to reside in Clinton County, as alleged, he thereby abandoned and forfeited the office, and it became vacant; and any subsequent claim, or attempt of any one, as Yonkey's deputy, to hold the office or discharge the duties thereof, would be without right, and a usurpation. * * * *"

Again in 17 Neb. 598, the Court held that a vacancy may exist in the office of county judge, although the duties of such office are being discharged by a person temporarily appointed by the proper authority, but the statute under which such a decision was rendered reads as follows:

"Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, as follows:

1. The resignation of the incumbent.
2. His death.
3. His removal from office.
4. The decision of a competent tribunal declaring his office vacant.
5. His ceasing to be a resident of the State, district, county, township, precinct or ward in which the duties of his office are to be exercised, or for which he may have been elected, *****."

In State ex rel. Attorney-General v. Sanderson, 280 Mo. 358, 217 S. W. 60, the court states,

*****the policy of the State is, that a duly elected or appointed official shall not be deprived of his position except for remissions in the performance of the duties of the office, or conviction of some crime which demonstrates he is unworthy to hold a position of honor or trust. Not only is said policy to be gleaned from statutory enactments but this court has decided that if an official possesses the requisite qualifications for his position, he can be removed from it only for misconduct connected with the performance of the duties of the office, except when some transgression apart from those duties is made by statute cause for removal; and that rule is general. *****

CONCLUSION.

The reason for a provision that he "shall have been a resident of the county in which he may be elected for one year next preceding his election" is found in obvious requirements of public policy, however, we find nothing in the statutes or in the decisions of the courts of this State, providing for the removal from office of an officer when the latter shall cease to reside in the district in which he was elected.

It is true that in Yonkey v. The State, supra, the court held that upon removal from the county, Yonkey abandoned and forfeited his office but one must bear in mind that in all similar cases, the Constitutions of the various states set out that a vacancy existed whenever the particular officer "ceases to be a resident of the State, district, county, township, precinct or ward in which the duties of his office are to be exercised, or for which he may have been elected,"****.

We find nothing in the facts presented which

would indicate to us that Judge Bolm has failed personally to devote his time to the performance of the duties of his office which by law it is his duty to perform.

We are therefore of the opinion that until such facts are brought to light, his office cannot be declared vacant.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General.

APPROVED:

ROY MCKITTRICK
Attorney-General.

WOS/afj