

STATE BOARD OF HEALTH: Authority to appoint Local Registrar of
Vital Statistics in Cities. Section 9043
R. S. Mo. 1929.

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February 9, 1934.



Hon. E. T. McGaugh, M. D.
State Health Commissioner
State Board of Health
Jefferson City, Missouri

Attention: Dr. Herman S. Gove.

Dear Dr. Gove:

We herewith acknowledge receipt of a request for an opinion of this office on the following matter.

Has the Board of Health of this State the power to appoint a local registrar of Vital Statistics in the Cities of Springfield and Hannibal, Missouri?

We understand there is no longer an issue so far as the City of Hannibal is concerned, and shall therefore deal exclusively with the City of Springfield. In connection with this question, I direct your attention to one particular fact. This is found in the first paragraph of the letter of Ralph W. Langston to Dr. E. T. McGaugh, dated September 9, 1933, and received by the State Board of Health December 15, 1933. This paragraph reads as follows:

"This is in reply to your letter of September 7, 1933. On the 3rd day of June, 1932, I received my commission under date of June 1st, 1932, appointing me to the office of Local Registrar of Vital Statistics for the 318 Registration District, comprising the Primary Registration Districts of Springfield City. Prim. Dist. No. 2001, North Campbell Tp. Prim. Dist. No. 5439 and South Campbell Tp. Prim. Dist. No. 5440."

I.

LOCAL REGISTRAR OF VITAL STATISTICS
TO BE APPOINTED BY STATE BOARD OF
HEALTH.

Article II of Chapter 52 R. S. No. 1929, provides for the uniform and systematic registration of births and deaths in this State. Under this article a central bureau of vital statistics is provided for. Section 9040 of said Article provides among other things as follows:

"The said Board shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time promulgate any additional forms and amendments that may be necessary for this purpose."

We emphasize the fact that the above section provides for a uniform system of registration of vital statistics. Section 9043 provides as a part of this system, for the appointment of local registrar by the Board of Health and states:

"Within ninety days after the taking effect of this article, or as soon thereafter as possible, the state board of health shall appoint a local registrar of vital statistics for each registration district in the state. The term of office of local registrars, appointed by said board, shall be for four years, beginning with the first day of January of the year in which this article shall take effect, and their successors shall be appointed at least ten days before the expiration of their terms of office: Provided, that in cities where health officers or other officials are conducting effective registration of births and deaths under local ordinances at the time of the taking effect of this article, such officers shall be continued as registrars in and for such cities, and shall be subject to the rules and regulations of the state registrar, and to all of the provisions of this article.* * *"

II.

TERM OF OFFICE OF LOCAL REGISTRAR
OF VITAL STATISTICS IS FOR FOUR
YEARS FROM JANUARY 1, 1909, AND
EACH FOUR YEARS THEREAFTER.

The term of office of local registrars is designated as four years, the first term to start from January 1st of the year in which the act was adopted. We find that this section was Section 4 of Senate Bill 149, adopted by the Regular Session of the Legislature of 1909, Laws of Missouri, 1909, page 538. The law was approved by the Governor May 8, 1909. Page 549. By the requirement of this clause, the first term of office of local registrar expired four years from January 1, 1909, and a new term began January 1, 1913 and expired four years thereafter. Likewise a term of this office expired December 31, 1932 and a new term commenced January 1, 1933. Referring to Mr. Langstons' statement, it is apparent that his appointment of June 1, 1932, was merely to fill the unexpired term of his predecessor and that his term of office expired on the 31st day of December 1932.

As stated by the Supreme Court in the case of State ex rel. Rosenthal v. Smiley et al. 263 S. W. 825, l. c. 827:

"* * * When the duration of the term is fixed, and also the beginning or ending, or both, a vacancy, if it occurs, is in the term of office as distinct from being in the office itself, and an appointment to fill such vacancy can only be for the unexpired portion. This rule, which makes for uniformity, and is in consonance with the general intent of our Constitution and legislative enactments, has had the repeated sanction of this court.* * *"

In affirming the foregoing decision in the case of State ex rel. Jones vs. Smiley et al. 300 S. W. 459, the Court specifically held that an appointment, such as we have in the instant case, did not extend beyond the expiration date of the unexpired term, l. c. 464:

"The order made December 15, 1924, was in excess of the authority of respondents' predecessors in office in so far as said order undertook to appoint a county counselor to hold office after January 1, 1925, and to that extent respondents had full power to set it aside. Treated as an appointment to fill a vacancy for the remainder of the term of the office of county counselor expiring January 1, 1925, the order of December 15, 1924, was valid and authorized relator to hold the office, discharge its duties, and enjoy its emoluments until respondents entered their order of January 3, 1925, appointing Mr. Nolan as county counselor.* * * * *

We therefore conclude the appointment of June 1, 1932, was to fill an unexpired term ending January 1, 1933.

III.

APPOINTMENT OF SUCCESSOR AUTOMATICALLY REMOVES INCUMBENT AS LOCAL REGISTRAR.

While it is true that under Article II of Chapter 52 a local registrar may only be removed for cause, in accordance with the provisions of the law, still such restriction does not apply after the term has expired. It is the uniform holding of the Courts of this State that upon the expiration of the term of office the incumbent acts merely at the will or pleasure of the appointive power. In the case of State ex rel. Withers vs. Stonestreet, 99 Mo. 361 l. c. 376, the following is found:

* * * * * But Belt's appointment, for reasons already given, was only effective for the residue of the term of office which had never been previously filled by appointment, and which began on the expiration of Keedy's term of office, to-wit, on the eighteenth day of June, 1887. This being the case, Belt's term of office was only for the remainder of a term of office which had never been fulfilled, to-wit, the time intervening between September 26, 1888, and June 18, 1889. Keedy had no term of office, in any proper sense of that expression, after June 18, 1887. Upon and after

that date, he was a mere locum tenens; a tenant at will, who could be removed without notice, and without charges preferred, at the pleasure of the executive, and the appointment of Belt accomplished his removal. Ex parte Hennen, 13 Pet. 230, 261.* * * *

While an incumbent may exercise the powers of one office until his successor is appointed it is apparent that the appointment of a successor to Mr. Langston terminated any authority he had by virtue of the office, and from the date of the appointment of the successor, the successor was the only one to exercise the powers and perform the duties of the office.

While the foregoing discussion is determinative of the issue here involved we shall direct a few remarks respecting the proviso found in Section 9043 hereinbefore quoted. For convenience we requote a portion of that proviso:

"That in cities where health officers or other officials are conducting effective registration of births and deaths* * **such officers shall continue as registrars in and for such cities.* * * *"

By a careful reading of the foregoing provision it is apparent that it is only those officials or officers who are in office at the time of the taking effect of the Act who were permitted to act as local registrar, such continuance being conditioned upon their effectual registration of births and deaths and in compliance with the rules and regulations of the Board. It cannot be contended that by the acquisition of the office a person is entitled, without an appointment, to act in the capacity of local registrar. It is apparent from a reading of the Act that it applies only to those "officers" or "officials" who are then conducting the registration. Most certainly the city official in this instance could not qualify as one who was "then conducting", in 1909, an effective registration of births and deaths. The Legislature meant that upon the expiration of their offices the State Board of Health would appoint a local registrar in accordance with the provisions of the Act, and from thence forth continue to appoint local registrars as the office became vacated either by the expiration of the term of office or for any other reason. Any other construction would place the local officials who were, in 1909 conducting effective registration, in office continuously and up

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until the present time if they so desired to retain the position as local Registrar. Such a construction is not within the contemplation of the Legislature and certainly cannot be adopted.

CONCLUSION.

It is therefore the opinion of this office that the term of office of Ralph W. Langston as Registrar of Vital Statistics in the City of Springfield, Missouri, expired on January 1, 1933, and that conceding a proper appointment his successor in office has been the Registrar of Vital Statistics from and after the date of his appointment.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED:

ROY McKITTRICK,
Attorney General.

HGW:MM