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County officers.

Term of office prescribed  
by statute may be terminated  
by amendment of statute.

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December 26th, 1934.

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Mr. R. S. Peterman,  
Prosecuting Attorney of Bollinger County,  
Marble Hill, Missouri.

Dear Sir:-

We have your letter of November 19, 1934, in which an  
opinion is requested as follows:

"I am asking your office for an opinion on the  
following set of facts.

"The county court of Bollinger County meet for  
an adjourned term of court during September, 1932 and acting  
under Section 9025 of the Revised Statutes of Missouri, 1929  
hired a Deputy Commissioner of Health. The only agreement  
entered into or only statement was as follows: the minutes  
of the county court show that Dr. ----- was hired for a  
period of three years as Deputy Commissioner of Health.

"Since that time Section 9025 has been amended  
making it optional whether or not the county court shall  
hire such an officer. The county court want to know whether  
or not they are bound to pay this doctor for the third year  
under the minutes of the court."

Section 9025, Revised Statutes of Missouri, 1929, pro-  
vides as follows:

"Sec. 9025. Deputy state commissioners of health  
for counties and cities.--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 com-  
missioner of health for that county for a term of three years.  
In case of a vacancy in the office of the deputy state com-  
missioner of health of a county, the county court shall at  
its next regular term of court appoint a reputable physician  
for the unexpired term. If the county court fails to appoint  
a deputy state commissioner of health as above provided at the  
February term of said court or at the next term following a  
vacancy, the state board of health shall appoint a reputable  
physician as deputy state commissioner of health for that  
county who shall serve until the county court of such county

makes such appointment. The county court of any county upon appointing a physician as deputy health commissioner shall confer with such physician and agree with him as to his compensation and expenses for the performance of his duties as deputy state health commissioner of that county and such compensation and expenses shall be paid to him out of the county treasury of that county. If it becomes necessary for the state board of health to appoint a deputy state health commissioner, as above provided, said state board of health shall fix a reasonable compensation for such deputy state health commissioner and shall designate what shall be his reasonable expenses, all of which shall be paid out of the county treasury of the county of which he is deputy state health commissioner."

Section 9025, Revised Statutes of Missouri, 1929, as repealed and reenacted, Laws 1933, page 271, provides as follows:

"Sec. 9025. Deputy state commissioners of health--appointment--term--salary.--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 year thereafter, said court may appoint a reputable physician, as a Deputy State commissioner of health for a term of one year. In case of a vacancy in the office of the Deputy State Commissioner of Health of the county, the county court may at its next regular term of court appoint a reputable physician for the unexpired term. But the power of deciding whether or not such a deputy state health commissioner will be appointed shall be vested in the county court. If a county court of any county decides to appoint a deputy health commissioner, as empowered in this act, it shall agree with said commissioner as to the compensation and expenses to be paid for such services which amount shall be paid out of the county treasury of the county."

The legal effect of the reenactment of the above section is the same as if the office in question were abolished by act of the legislature. At least since the reenactment it is no longer mandatory on the county court to appoint such officer but is merely optional or discretionary; and the three year term is abolished in favor of the one year term when an appointment is made. The office being purely a creature of statutory enactment, and the officer deriving his power solely from the statute, the legislature may at any time modify, change or abolish said office. In other words, the officer has no vested right in the office, holding it merely at the pleasure of the legislature.

The law of the state of Missouri is well settled on this point. We refer you, however, to one or two cases as being particularly illustrative.

For instance, in the case of Sanders vs. Kansas City, 175 Mo.App. 367 the court, at page 371-2, stated as follows:

"In this State our courts always have recognized and applied the doctrine supported by the great weight of authority in America that no one can acquire a vested right in an office established by the legislative department of a State or municipality. All offices are created for the public good and the rights of their incumbents are subordinate and inferior to that prime object. The power to create, unless restrained by law, includes the power to abolish and an officer elected or appointed even for a definite term, takes office with the implied understanding that the power which created the office may abolish it before the expiration of his term, in which event he will find himself out of office. As is well said in City of Hoboken v. Gear, 27 N. J. L. 265, quoted with approval by our Supreme Court in Gregory v. Kansas City, 244 Mo. 549:

"The appointment of a public officer for a definite term with a fixed salary bears no analogy to a private contract between individuals for service. The private contract is purely voluntary. Both parties are bound by its stipulations. The employer can neither alter the time or mode of payment, nor vary the service to be rendered, nor abridge the time of service. Each is liable to the other for breach of contract on failure to perform. But an appointment to a public office during a term of years, and the acceptance of such office, is not a contract between the government and an individual that the officer will serve or that the government will pay during that period. The acceptance may not be a matter of choice but of compulsion; and where the acceptance is voluntary, the officer is not bound to serve during the term. He may remove from the State or resign, or otherwise determine his official relation without a violation of contract. . . . And on the other hand the government may abolish the office and thereby terminate the service without a violation of contract."

And again, in the often cited case of State ex rel. v. Davis, 44 Mo. 129, the court, at page 131, stated as follows:

"It proceeds upon the theory that a person in the possession of a public office created by the Legislature has a vested interest, a private right of property, in it. This is not true of offices of this description in this country; they are held neither by grant nor contract. A mere legislative office is always subject to be controlled, modified or repealed by the body creating it. In England, offices are considered incorporeal hereditaments, grantable by the crown, and a subject of vested or private

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interests. Not so in the American States; they are not held by grant or contract, nor has any person a private property or vested interest in them, and they are therefore liable to such modifications and changes as the law-making power may deem it advisable to enact."

In view of the above, therefore, it is our opinion that if the county court does not desire to employ a deputy commissioner of health for the coming year, they are not obligated under the minutes of the court or under the statute to pay for the third year in question.

Very truly yours,

CHAS. M. HOWELL, Jr.  
Assistant Attorney General

CMHJr:LC

APPROVED:

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Attorney General.