

SALARIES AND FEES: Circuit Clerk is entitled to salary beyond December 31 and until first Monday in the following January, at which time his term expires.

11-6
November 1, 1935



Mr. C. W. Chastain,
Deputy County Clerk,
Plattsburg, Missouri.

Dear Sir:

We are in receipt of your inquiry of October 24, 1935, which is as follows:

"The County Court would like to have an opinion upon the following:

"Mrs. Grace C. Bland retired from the office of Circuit Clerk of this County on the First Monday of this year which was January 7th. She had held that office for twelve years and she thinks she took office on January 1st. Each year she was paid the salary set by statute which during her last term of office was \$2000.00 per year. This was paid in equal monthly installments and she received her last payment December 31, 1934. The question is whether the Court should pay her for the week between January 1st and January 7th of this year."

Section 39 of Article 6 of the Missouri Constitution provides as follows:

"The St. Louis Court of Appeals and Supreme Court shall appoint their own clerks. The clerks of all other courts of record shall be elective, for such terms and in such manner as may be directed by law * * *."

Section 11664, R. S. Mo. 1929, provides as follows:

"At the general election in the year eighteen hundred and eighty-two, and every four years thereafter, except as hereinafter provided, the clerks of all courts of record, except of the supreme court, the St. Louis court of appeals, and except as otherwise provided by law, shall be elected by the qualified voters of each county and of the city of St. Louis, who shall be commissioned by the governor, and shall enter upon the discharge of their duties on the first Monday in January next ensuing their election, and shall hold their offices for the term of four years, and until their successors shall be duly elected and qualified, unless sooner removed from office."

It will be noted that this last section provides that the circuit clerk, who, of course, is the clerk of a court of record, shall enter upon the discharge of his duties on the first Monday in January next after his election, and shall hold his office for the term of four years and until his successor is duly elected and qualified, unless sooner removed from office.

Section 655, R. S. Mo. 1929, adopts on behalf of the State certain rules of construction of the statutes, among them being:

"Words and phrases shall be taken in their plain or ordinary and usual sense."

Your inquiry shows January 7, 1935, to be the first Monday of the year, so there is no question here presented as to the effect of holding over beyond the end of the term and until such later date as the successor is elected and qualified. Your question really appears to be whether the term of "four years" from the first Monday in January of a given year means January 1st or four years, measured by days, weeks and months, from the date the party was inducted into office. In other words, what is the meaning of the word "year" as used in this statute?

By the rule of construction adopted as the first rule in Section 655, the word "year" means 365 days.

In the case of State ex rel. Withers v. Stonestreet, 99 Mo. 361, this question was discussed and a similar statute was construed by the Supreme Court of this state. In that case the court was construing a statute which said:

"Each inspector shall * * * hold his office for two years from the date of his appointment, and until his successor is duly appointed and qualified * * *."

The facts were that the original appointment was made on June 18, 1879, but one of the appointees held over beyond his two-year period until September 26, and at that time the Governor appointed another to the office, and this latter appointee claimed the right to hold the office for two years from September 26. The court declined to adopt that view, saying, l. c. 374:

" * * * there appears a legislative command that the terms of office of each appointee is to last two years 'from the date of his appointment;'
* * *"

"It will therefore be ruled in answer to the first question propounded: That, inasmuch as the term of office of the first appointee began on the eighteenth day of June, 1879, and continued for two years from and after that date, that the term of office of each successive appointee, whether for a whole term, or for the part of an unexpired term, was regulated and controlled by the date fixed by the first appointment; and that it was beyond the power of the executive, when making subsequent appointments, to ignore or disregard the tenure of office thus first established. * * * 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."

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We understand that your circuit clerk inquired about held this office until January 7, 1935. No other person held it during that time. You had a circuit clerk at that time and that was this person. The compensation of an officer is regulated by statute and the fair meaning of the word "year", as used in Section 11664, is 365 days, except when there is a leap year, and then it means 366 days, and it does not end on the 31st day of December of a given year in this instance.

CONCLUSION

It is our opinion that the clerk who was elected and who qualified and acted as your circuit clerk from the first Monday in January, 1931, was elected for a term which expired on January 7, 1935, and as such clerk is entitled to compensation until that date.

Very truly yours,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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