

COUNTY CLERK--COUNTY HEALTH OFFICER--COUNTY COURT:
County is not legally liable for salary of county
health officer not legally appointed and County Clerk
is personally liable for certification of illegal
expenditure to health officer.

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March 21, 1935.



Mr. J. B. Hicks
Clerk of the County Court
Taney County
Forsyth, Missouri

Dear Sir:

I hereby acknowledge your request for an opinion
dated March 6th, 1935. Your request is as follows:

"I have a rather peculiar question
to ask and probably you wont feel
like answering it but if you will
it will sure be appreciated by me
as I think under the Budget law it
may cost me something if I make a
mistake in signing warrants that I
am not wholly satisfied that is
legal. Now this is the proposition,
The last record that our County
Court shows regarding the Appointment
of a Deputy County Health officer
was March 4th, 1929 and that appoint-
ment was made for four years, which
would have been to March 4th, 1933.
The Physician has been doing work
all the time and drawing his little
salary and the 1933 laws made it
mandatory to only appoint for one
year and that to be made at the
Regular February Term of the Co.
Court. The Court seems to think
the appointment was made February
1934, but no record of it and the
Dr. has never qualified so far as the
Records shows, which may not be re-
quired. He puts in his account for
December 1934, January and February
1935 for his salary, Would I be

justified to sign the warrant and not be personally liable under the present Budget law for the amount if the office was really vacant. In your opinion does he have to qualify or be commissioned by the Court? The law says nothing on that line and I take it from that he possibly does not have to qualify. I certainly would appreciate a reply to this at your earliest convenience."

Section 9025 R. S. No. 1929, provides as follows:

"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 commissioner of health for that county for a term of three years. In case of a vacancy in the office of the deputy state commissioner 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, Laws of 1933, page 271, after repealing the above law, provides as follows:

"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."

In the case of Sanders v. Kansas City, 162 S. W. 663, 1. c. 665; 175 Mo. App. 367, the Appellate Court stated the law thus:

"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, take 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."

In an early case of State v. Gordon, 139 S. W. 403, 1. c. 407, 236 Mo. 142, our Supreme Court said:

"There is no doubt of the power of the Legislature to refuse to make an appropriation for the payment of the salary and expenses of any public officer holding office under the Constitution or laws of this State. Neither is there any doubt as to its power to abolish any office not provided for by the Constitution."

Again the Supreme Court said in State ex rel. v. Davis, 44 Mo. 129, 1. c. 131:

"A mere legislative office is al-

ways subject to be controlled, modified, or repealed by the body creating it."

Budget laws of 1933, page 345, Section 8, provides in part as follows:

"Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect; and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond."

Budget laws of 1933, page 350, Section 19, provide in part as follows:

"No contract or order imposing any financial obligation on the county shall be binding on the county unless it be in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which the same is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation thereby incurred and unless such contract or order bear the certification of the accounting officer so stating,"

Budget laws 1933, page 351, Section 20, provide in part as follows:

"The accounting officer shall be personally liable and liable on his bond for the amount of any obligation incurred by his erron-

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eous certification* * * * or for the payment of any amount not legally owing by the county."

CONCLUSION.

Thus we see that the old law authorized the appointment of a health commissioner every third year after the original appointment which you say was on March 4, 1929. Under the old law the Statute did not authorize the four year appointment, which you say was made, but even under the old law the original office would have expired March 4, 1932, and not March 4, 1933, as suggested in your letter. The county courts appointment, in so far as the court exceeded their authority to appoint, is void and the appointment expired on the statutory limitation. It is the opinion of this office that on the statutory limitation there was a vacancy in office if there was no new appointment.

Assuming that a new appointment was made as provided in the then existing law, it is still our opinion that the new act of 1933, repealing the old act appearing in the Statutes of 1929, legislated out of office any person holding office by virtue of the old law.

Any person who holds over and continues to perform the duties of said non-existing office is at best but a de facto officer. On the other hand said hold over is not entitled to the emoluments of the office which was created by the new law, unless he received his appointment under the provisions of the new law.

A county court speaks only through and legally obligates the county only by its record and its orders made in writing. Under the new law, the Legislature did not make it compulsory for a county court to employ a deputy State Health Commissioner. In counties where the County Court deems such an officer necessary it is up to the provisions of the new act, otherwise an allowable office under the law is vacant for want of an officer. Where a county court follows the provisions

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of the new act and appoints a county health officer, such a contract being for service imposing a financial obligation on the county must be in writing in order to comply with the budget law. You say the court "seems to think the appoint was made February 4, 1934." What they "seem to think" does not bind the county in a legal obligation. If no written contract was entered into there was not a compliance with the budget law.

You note that in the budget law you are the "accounting officer" and as such you and your bondsmen are personally liable for your erroneous certification or payment of any amount not legally owing by the county. It is our opinion that under the circumstances outlined in your request for an opinion you would not be justified in signing said county warrant.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTERICK
Attorney General.

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