

STATE BOARD OF OPTOMETRY;

Board must elect a president in July in each year, and failure thereof means that the president and secretary hold at the pleasure of the board, and may be removed at any time.

July 18, 1935.



Dr. Louis Hedega,
Member Missouri State Board of Optometry,
105 Main Street,
Richmond, Missouri.

Dear Dr. Hedega:

This is to acknowledge your letter dated July 17, 1935,
as follows:

"As a member of the Missouri State Board of Optometry, I would like to have your opinion on the following question, according to Section 13498 of the Revised Statutes of Missouri of 1929, which sets out that the members of the board shall annually in the month of July meet and organize by electing a president from among the members thereof and etc.

"The question I have is in the event the board shall fail to elect in the month of July would they have a right to elect at a later meeting, or would the present president of the board continue, and, if so, would he continue as president until an election is held, or would he continue until the next annual meeting in July of the next year?

"I would appreciate your opinion on this as our annual meeting is to be held soon, and it is possible that the board may not agree on a president at this meeting."

Chapter 101, R. S. Missouri, 1929, pertains to State Board of Optometry, and Sec. 13498 of said chapter provides, in part, as follows:

"The governor, with the advice and consent of the senate, shall appoint five persons from among such

7/18/35.

practicing optometrists of the state* * * who shall constitute the state board of optometry. * * * The members of the state board of optometry, before entering upon the discharge of their duties, shall make and file with the secretary of state, the constitutional oath of office. The members of said board shall within thirty (30) days after appointment, and annually thereafter in the month of July, meet and organize by electing a president from among the members thereof, and a secretary who shall also be the treasurer of said board, who shall not be a member of said board, but who shall "be a reputable practicing optometrist."

Article 14, Section 6, of the Missouri Constitution pertains to the constitutional oath of office, and in part provides as follows:

"All officers, both civil and military, under the authority of this State, shall, before entering on the duties of their respective offices, take and subscribe an oath, or affirmation, to support the Constitution of the United States and of this State, and to demean themselves faithfully in office."

Therefore, a person appointed to membership of the State Board of Optometry, before he can enter upon the discharge of his duties as a member must subscribe to the constitutional oath, which provides that said person will support the constitution and laws of the state, and faithfully demean himself in office.

Section 13498, supra, makes it mandatory and part of the duties of the members of the board to meet annually, in July, and elect a president and secretary. Therefore, if the board members do not elect a president and secretary at the time prescribed by statute, such would be derelict in the performance of their duty, as well as violate their oath of office. Hence we do not perceive why the members would fail or neglect to comply with Section 13498, supra.

However, your question assumes that the board might fail or neglect to comply with the statute relative to electing a president at the July meeting, and you desire to know what the effect of such would have upon the incumbent (present president).

7/18/35.

We do not find any statute or case decided in our courts which covers the particular question. However, we do find a case which, by analogy, would apply. We refer to State ex rel. Rife v. Hayes et al., 177 No. 360. Note the language of the Supreme Court en banc in said case, pp. 377-378:

"The law is firmly settled in this State that an officer who has served his full term, holds thereafter as a mere locum tenens until his successor is appointed or until the appointing power chooses to remove him. (State ex rel. Withers v. Stonestreet, 99 No. 361.)

"In that case, it was expressly held that 'where the term of office of the incumbent has expired, and where he is simply holding over at the pleasure of the executive, * * * the power of removal is incident to the power of appointment, without cause shown, or notice given or hearing had. (Ex parte Kemmen, 13 Fet. 230; Field v. Commonwealth, 32 Pa. St. 478; Keenan v. Perry, 24 Tex. 253, and cas. cit.) * * *"

By virtue of the above case it is our opinion that if the Board should fail to elect a president at the time, as provided by Sec. 13498, supra, the present president would hold the office as president at the pleasure of the Board, and said Board would have the power to remove him at any time it so desired.

However, as hereinbefore stated, we do not believe that this contingency will arise, because the Board must do its duty according to their oath of office.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY MCKIPPEN
Attorney-General

JLH/LD