

PUBLIC ADMINISTRATOR: Tenure of Office.

November 13, 1936.

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Mr. Paul S. Limerick
Public Administrator
7814 Forsythe Blvd.
Clayton, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated November 10, 1936, which reads as follows:

"As you probably know I was successful in being elected to the office of Public Administrator in St. Louis County in the landslide last Tuesday. I suppose that I am not definitely in office, in the official opinion of the Attorney General, until I have become one of the official family by qualifying, but perhaps I can get some official data on this matter.

"The incumbent, who is also a Democrat, wants to be relieved of his office as soon as possible, and I have not been able to find any reference in the statutes to the definite term of a Public Administrator. I assume that I can take over the duties of that office as soon as I receive my commission and take my oath and post my bond, but as far as any legal precedent is concerned I cannot find any. Will you be kind enough to give me your opinion on that by return mail, if it is not imposing upon you?

"What I want to do is this, as soon as the official count is completed in the county I want to talk to

Jefferson City and obtain my commission from the Governor, and return immediately to take my oath and post my bond and take over the duties of that office without waiting for the first of the year. In your opinion would it be necessary for the incumbent to accompany me to the Governor's office to accomplish this purpose, or is it just as well that I see him alone?"

Section 296 R. S. Mo. 1929, provides:

"Every county in this state, and the city of St. Louis, shall elect a public administrator at the general election in the year 1880, and every four years thereafter, who shall be ex officio public guardian and curator in and for his county. Before entering on the duties of his office, he shall take the oath required by the Constitution, and enter into bond to the state of Missouri in a sum not less than ten thousand dollars, with two or more securities, approved by the court and conditioned that he will faithfully discharge all the duties of his office, which said bond shall be given and oath of office taken on or before the first day of January following his election, and it shall be the duty of the judge of the court to require the public administrator to make a statement annually, under oath, of the amount of property in his hands or under his control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property; and the court may from time to time, as occasion shall require, demand additional security of such administrator, and, in default of giving the same within twenty days after such demand, may remove the administrator and appoint another."

Section 301 R. S. Mo. 1929, provides:

"When a public administrator has been appointed to take charge of an estate, he shall continue the administration until finally settled, unless he resigns, dies, is removed for cause, or is discharged in the ordinary course of law as the administrator."

Article XIV, Section 5, of the Missouri Constitution provides:

"In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."

In the case of State ex rel. v. Kennedy, 73, Mo. App. 384, that Court said at l. c. 388:

"We are of the opinion that the true meaning of the statute is that a public administrator continues to administer estates in his hands even after the expiration of his term of office, unless he dies, resigns his office, is removed, or is otherwise discharged according to law. In this case, as before stated, Kennedy resigned his office, his resignation was accepted by the governor and his successor appointed. He thereby became incapacitated to further administer estates in his hands and his duties devolved upon his successors. His functions as administrator ceased as effectively as if he had been removed from office. The express provision of the statute is that he shall continue the administration 'unless he resigns.' "

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CONCLUSION.

There are no statutes or cases in Missouri which specify with particularity when the term of the office of public administrator shall commence. We construe Section 296, supra, to mean that after election, pursuant to the provisions of said section, the only formality necessary for said successful candidate to comply with is to take the prescribed oath and furnish the prescribed bond on or before the first day of January following said election. When this is done, then the successful candidate is ready to enter upon the duties of his office, and continues to hold office until his successor be elected and qualified.

It is true that the present public administrator of St. Louis County has the constitutional and statutory power to resign the duties of his office. When he so resigns, then he ceases to continue as administrator of all estates in his hands. His written resignation, presented to the Governor, is a sufficient resignation when accepted to alienate him from the office. Should he not resign then he continues to administer estates in his hands.

Yours very truly

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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