

SURVEYORS:)
COUNTY OFFICERS:)

Removal from county no disqualification
for office under Section 1571, R. S. 1929.

March 25, 1936.

3-30



Governor Guy B. Park
Executive Office
State of Missouri
Jefferson City, Missouri

Dear Governor Park:

This is to acknowledge receipt of your letter
of March 19th, as follows:

"A peculiar situation has arisen on
which I desire your opinion.

"A duly elected county surveyor has
removed from the county from which
he was elected. The County Court
has declared the office vacant. Is
there any law in Missouri which makes
the office of county surveyor vacant
upon his removal from the county in
which he was elected to that office?"

We shall assume that the surveyor has removed from
the county and changed his residence and also that he has
not moved from the State of Missouri.

For the qualifications on eligibility of public
officers in Missouri we must look to the Constitution and
the statutory provisions therefor. Section 10, Article
VIII of the Missouri Constitution, adopted February 26,
1924, is exactly the same as Section 12, Article VIII,
Constitution of 1875, and provides as follows:

"No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment."

And Section 11571, R. S. Mo. 1929, pertaining to "county surveyors" provides:

"At the November election in the year 1868, and every four years thereafter, the qualified voters of each county shall elect some suitable person as county surveyor, who shall hold his office for four years, and until his successor is elected, commissioned and qualified. The present incumbents may remain in office until the persons elected at the time aforesaid are duly commissioned and qualified."

It will be noted that said Section 11571 provides that "the qualified voters of each county shall elect some suitable person as county surveyor." The statutory qualifications, therefore, are that the surveyor shall be a suitable person.

Funk & Wagnall's Standard Dictionary defines "suitable"; as fit or adapted for a specified purpose.

In an early case in Missouri - State ex rel. Attorney-General v. Woodson, 41 Mo. 227, l. c. 230, the court said:

"The power of the state to declare in its fundamental law, or, when that is silent upon the subject, by legislative enactment, what shall constitute the test of eligibility to office, is as clear and unquestioned as is the power to fix the qualifications of voters."

The state may fix the qualifications of those who shall hold state offices and, subject to such limitations

as may be imposed by the State Constitution, such power may be exercised by the State's Legislature. 46 Corpus Juris, p. 936. And at page 938, Section 35, of the same text, it is said:

"In the absence of a constitutional or statutory provision residence within the district over which the jurisdiction of the officer extends is unnecessary to eligibility."

In Mechem on Public Officers, Section 438, page 280, it is said:

"Where the law thus requires the officer to reside within the district which he represents, and a fortiori so where it expressly declares that his removal from the district shall create a vacancy, a permanent removal from the district represented will be deemed an abandonment of the office and a vacancy will result."

And conversely, where the law does not require one to reside in a district, a removal of an officer from the district does not create a vacancy in the office.

Section 11571, supra, has been carried forward in the different revisions of the statutes in almost identical form since 1855. It is a well known fact that at the time of the enactment of this statute (1855) that Missouri was sparsely settled and that many counties had not been organized. All lands at that time had not been surveyed and surveying was an important and a very necessary profession. A surveyor had to have special training and equipped to do technical work. At that early date there was much surveying and a surveyor's services were in great demand. It may have been then that there was no competent surveyor in many counties and residential qualification was not required; and the only statutory qualifications then, as now, were that he be a suitable person and the residents of the respective counties were permitted by statute to elect one who did not reside in said counties. This may

throw some light on the reason for the statute not requiring a residential qualification. Therefore, in the absence of any constitutional or statutory qualification that a surveyor reside in the county from which he was elected, we cannot say that a surveyor might not move from the county from which he was elected and thereby lose his office.

By an examination of the statutes of Missouri specific qualifications are required before one may hold certain offices and it is provided in some cases that officers must be residents of the township, county or district from which they were elected or appointed, and in other cases residence is not a prerequisite to the holding of the office.

It is also significant that under the County Highway Engineer Act, Article 8, Chapter 42, R. S. Mo. 1929, and particularly Section 8011 of said article and chapter, it is provided that the county court of some of the counties in this State may, in their discretion, appoint the county surveyor of their respective counties to the office of county highway engineer, provided he is thoroughly qualified and competent, as required by this article; and the requirement of the qualifications of a county highway engineer under Section 8009, R. S. Mo. 1929, is that he shall be a resident of the State of Missouri, and shall be skilled in the laying of drains etc. And in other counties the surveyor is ex officio county highway engineer. Section 8020, R. S. Mo. 1929.

It is, therefore, our opinion that if the surveyor in question has the constitutional and statutory qualifications to hold the office of surveyor, that the fact that he has removed from the county, and not outside the State, does not in itself create a vacancy in that office and constitute an abandonment of same, if said surveyor is ready, able and willing to perform all of the duties of said office.

Very truly yours,

APPROVED:

COVELL R. HEWITT
Assistant Attorney-General

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

CRH:EG