

SHERIFFS: Sheriff can succeed himself in office when?

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February 17, 1936



Honorable Pleas Wright
Sheriff of Boone County
Columbia, Missouri

Dear Sir:

We acknowledge your request for an opinion dated January 28, 1936, which reads as follows:

"As the present sheriff of Boone County, Missouri, I desire the opinion of your office upon the following proposition:

"At the November election 1932 Roger Wilson was elected Sheriff of Boone County and on January 1, 1933, qualified and served as such sheriff until June 14, 1933, at which time he was killed while in the performance of the duties of his office. Immediately thereafter I was appointed by the County Court as acting sheriff for thirty (30) days, at which time a special election was held to fill the vacancy in the sheriff's office of Boone County and at that special election I was elected to fill the unexpired term of the said Roger Wilson and my commission so reads.

"I now desire to become a candidate for Sheriff of Boone County at the regular 1936 election and I am desirous of having your opinion as to whether I am eligible to be elected sheriff for a full term under the circumstances. Section 11, Article IX of the Constitution of Missouri relates to this matter, but I desire the benefit of your opinion relative to the matter."

Article IX, Section 10, Missouri Constitution provides in part as follows:

"There shall be elected by the qualified voters in each county on the first Tuesday next following the first Monday in November, A. D. 1908, and thereafter every four years, a sheriff and coroner. They shall serve for four years and until their successors be duly elected and qualified, unless sooner removed for malfeasance in office. * * * *"

Article IX, Section 11 of the Missouri Constitution provides:

"Whenever a vacancy shall happen in the office of sheriff or coroner, the same shall be filled by the county court. If such vacancy happen in the office of sheriff more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold office until the person chosen at such election shall be duly qualified; otherwise, the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified. If any vacancy happens in the office of coroner, the same shall be filled for the remainder of the term by such county court. No person elected or appointed to fill a vacancy in either of said offices shall thereby be rendered ineligible for the next succeeding term."

Article XIV, Section 5, 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."

CONCLUSION.

By the constitutional provisions above quoted we see that the office of sheriff in Missouri may be filled either by election at the General Election, held every four years, as per Section 10, supra, or said office may be filled, in case of vacancy, by appointment of the County Court, or where the vacancy in office occurs more than nine months prior to the time of holding a General Election, then a special election of a sheriff to fill the vacancy is provided for and the sheriff appointed to fill in the vacancy holds the office until the person elected at the special election be duly qualified, as per Article IX, Section 11, supra.

We are enclosing the opinion of this Department written by Honorable Olliver W. Nolen, Assistant Attorney General, to Honorable Joseph C. Crain, dated June 15, 1934. Following the logic of said opinion we believe the office of sheriff in Boone County could have been filled at the General Election of November, 1934, and your commission which reads that you, at the special election, were elected to the unexpired time of Roger Wilson, does not mean that you were elected to hold office until the General Election 1936. The office of Boone County not being filled at the General Election of 1934, presents this situation: We believe that you are now holding said office pursuant to appointment and special election as provided in Article IX, Section 11, supra, and are now enjoying the office as a hold-over. Having qualified for said office after the special election, and by failing to run for reelection in 1934, you are now holding said office under the provision of Article XIV, Section 5, supra, and have a right to said office until a successor be "elected, appointed and qualified."

It is true that a sheriff elected under the provisions of Article IX, Section 10, supra, can serve but four years and until his successor be elected and qualified, but the prohibitions of Article IX, Section 10, supra are

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not applicable in your case because you have never held the office by virtue of said section. Your present title to the office is by virtue of Article IX, Section 11, supra and Article XIV, Section 5, supra, and since one who is appointed or elected to the office of sheriff by virtue of Article IX, section 10, supra, can not thereby "be rendered ineligible for the next succeeding term", and since the election of November, 1936 starts the next succeeding term of office to the term to which you were elected to fill the vacancy, it follows as our opinion that nothing in the law prohibits you from being a candidate to succeed yourself, and if elected we are of the opinion that you could hold office for four years and until your successor be duly elected and qualified, unless sooner removed for malfeasance in office.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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