

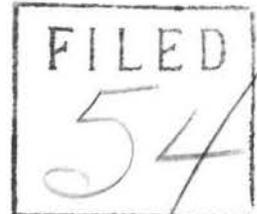
OFFICERS

COUNTY COURTS: Where no restrictive words are used in the statute providing for the holding over of an officer, such person holds over until his successor is duly appointed and qualified.

The policy of selecting an individual by the court to any office within the county should be left to the discretion of the court.

February 24, 1937

2-27



Mr. Edward W. Long
Prosecuting Attorney
Fike County
Bowling Green, Missouri

Dear Mr. Long:

This will acknowledge receipt of your letter of recent date requesting an opinion from this department upon the following set of facts:

"Our County Court here is endeavoring to select a Highway Engineer. Each of the three judges have a candidate and are dead-locked as neither of them will yield. They have asked me for the following rulings.

(1) Under the above situation will the present Highway Engineer hold over until his successor is appointed?

(2) Under the present situation should the Presiding Judge, who is the Presiding Officer, support a candidate of his own or should he break the tie and support one of the candidates advanced by one of the other judges?"

Your attention is directed to Section 8006, R. S. Mo. 1929, relating to the appointment of a county highway engineer, which reads as follows:

"There is hereby created in the several counties of the state of

Missouri the office of county highway engineer, and the county courts of each county in this state are hereby authorized and empowered to appoint, and may appoint a highway engineer within and for their respective counties at any regular meeting for such length of time as may be deemed advisable in the judgment of the court, at a compensation to be fixed by the court."

It is to be noted from the above section that the county courts in all counties of this state are authorized and empowered to appoint, and may appoint, a county highway engineer for such length of time as may be deemed advisable in the judgment of the court. This section of the statute does not give the court power to appoint an engineer for any definite length of time, except to say for such length of time as may be deemed advisable in the judgment of the court.

Under the provisions of Article XIV, Section 5, of the Constitution of Missouri, it is provided:

"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."

Your precise question as to whether a county highway engineer may hold his office until his successor is duly appointed, or chosen, was ruled upon in the case of Langston vs. Howell Co., 79 S. W. (2nd) 99, l. c. 102. The Court, in passing upon the constitutional provision above cited, as well as the statutory provisions said:

"Our Constitution (section 5, art. 14)

provides that: '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,' and section 11196 R. S. 1929 (section 5168, R. S. 1919), No. St. Ann. Sec. 11196, p. 6141, reads: 'All officers elected or appointed by the authority of the laws of this state shall hold their offices until their successors are elected or appointed, commissioned and qualified.' We find no constitutional or statutory provision which either expressly or by implication excludes the county highway engineer, or the office of county highway engineer, from the operation and effect of the foregoing constitutional and statutory rule so that since there is no 'contrary provision' the rule so prescribed must be applied. It is said in 46 C. J. p. 968: 'The general trend of decisions in this country is that, in the absence of an express or implied constitutional or statutory provision to the contrary an officer is entitled to hold his office until his successor is appointed or chosen and has qualified.' Langston's official term was fixed at one year, but upon the expiration thereof, no successor having been appointed, his right to hold such office, and his title thereto, continued until the right of a duly appointed and qualified successor attached. His right to hold over and his continuance in the office was of course contingent and defeasible subject to be terminated at any time by the appointment and qualification of his successor. During the time an officer so holds over, under the provisions of the constitutional and sta-

tutory provisions, supra, he holds the office as a de jure officer (46 C. J. p.969) and by the same tenure, at the prescribed term, until the right of his duly chosen and qualified successor attaches. It therefore appears that the trial court was in error as to the applicable rule of law, and in holding that Langston was not entitled to hold over and continue in office after the expiration of the term prescribed by the order of appointment."

In light of the above, it is the opinion of this department that your present county highway engineer is permitted to continue in his office until such time as a successor is duly appointed and has qualified.

We are reluctant in respect to your second question to suggest to the county court, or any of its members, as to what they should do in order to break a "dead-lock" which exists.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RCS:RT