

PUBLIC ADMINISTRATOR: Term of office. Eligibility to office not affected by time of filing surety bond.

January 25, 1937.



Honorable R. W. Tener
Probate Judge
Newton County
Neosho, Missouri

Dear Sir:

We acknowledge your request for an opinion dated January 14, 1937, which reads as follows:

"The newly elected Public Administrator filed his bond in the County Clerk's office December 26th, 1936, and it was approved by the county court.

"Yesterday January 13th, 1937, the bond was handed to me by the county clerk, and no action was taken by this court.

"Under Sec. 296 and 297, R. V. S. 1929, what court should approve the bond of the Public Administrator?

Under Section 296, can the bond be filed after Jan. 1st, as required by said section, and if filed after that date can it be approved, if a good bond is filed, or should the old Public Administrator hold over?

"It has been the practice in this county for the Probate Judge to approve this bond, but it was handled by the county court this election."

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."

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 297, R. S. Mo. 1929, provides:

"His certificate of election, official oath and bond shall be filed and recorded in the office of the clerk of said court, and copies thereof, certified under the seal of such court,

shall be evidence. Any person injured by the breach of such bond may sue upon the same in the name of the state for his own use."

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."

46 C. J., Section 32, p. 937, states the law thus:

"Statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers. * * * *"

"There is a presumption in favor of eligibility of one who has been elected or appointed to public office."

"Provisions not intended to restrict the rights of the individual, but to secure the faithful and efficient performance of public duties, are not deemed to impose additional qualifications as to eligibility."

In Missouri, the filing of a bond is a prerequisite to the full title of office for in Ex Parte Craig, 130 Mo. 590, 1. c. 899, 32 S. W. 1121, the court said:

"It appears to us that until Mr. Nash has given bond, approved as required by law, he is not in position to demand of Mr. Craig immediate possession of the office."

In that state of the case, Mr. Craig could not properly be held guilty of contempt in not giving the office and its public documents to Mr. Nash. On the contrary, Mr. Craig, in such circumstances, was entitled to remain in the office by virtue of his commission, until, at least, Mr. Nash, the contestant, had fully qualified according to law to enter on his duties. Under the constitution and the law, until Mr. Nash qualified, Mr. Craig was rightfully in the office."

In Missouri, the statutory requirement that a bond be filed within a prescribed time has been held to be directory only, for in *State v. Texas County*, 44 Mo. 230, l. c. 231, the court said:

"It seems that the action of the court in rejecting the bond was arbitrary and oppressive. No evidence was permitted to be introduced to show the solvency of the sureties; but the court, acting of their own motion, summarily rejected the same, and declared the office vacant on the same day, without giving any time to file a new bond. When relator did present an additional bond, the court refused to entertain it for the reason that an appointment had been made, and it was too late. Admitting that the first bond was insufficient, the action of the court in proceeding to declare the office vacant on the day of its rejection, and appointing another person to fill the office, was totally unwarranted. If the time originally prescribed by law for filing the bond had expired when these proceedings were had, that created no forfeiture. The statute as to time is directory."

In the case of *State ex rel. v. Kennedy*, 25 Mo. App. 384, the court, in construing the Statute dealing with public administrators, 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.'"

CONCLUSION.

There are no statutes or cases in Missouri which specify with particularity when the term of the office of the public administrator shall commence. We construe Section 296, supra, to mean that the public administrator shall give the required bond before entering upon the discharge of his duties. Our construction is in accordance with accepted modes of statutory construction, there being a presumption of eligibility in favor of the people's choice. A reading of the act relating to public administrators, and especially Section 301, supra, and the cases decided thereunder, shows that the duties of a public administrator do not begin or end with a term, but rather begin when estates are placed in his hands, and said estates continue in his hands even after the expiration of his term, unless he dies, resigns his office, is removed, or is otherwise discharged according to law. See State ex rel. v. Kennedy, supra.

We are of the opinion that under the provisions of Section 296, supra, the probate court is the proper court to approve the bond of a public administrator, and that

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he must exercise reasonable discretion in performing this duty. We are of the opinion that the statute as it relates to "the first day of January" is merely directory, and the surety bond can be filed in the Probate Court and approved after that date and not affect the newly elected administrator's eligibility to said office.

It is our opinion that under the Constitution of Missouri, the old public administrator holds over until the newly elected public administrator's bond be approved by the probate court, but, on the other hand, it is not in the power of the probate court to arbitrarily refuse to approve a good bond as a subterfuge for keeping an otherwise elected and qualified office holder from taking full title to his office.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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