

CITY TREASURER - Is a county or state officer in St. Louis, Missouri

October 12, 1938

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Board of Election Commissioners
City of St. Louis
208 South 12th Blvd.
St. Louis, Missouri

Gentlemen:

We are in receipt of your letter of October 7th wherein you inquire whether or not candidates for the office of City Treasurer of the City of St. Louis should be placed upon the official ballot to be voted at the November 1938 election.

From the information we have gained in our research on this question, we find that the present incumbent is the appointee of the Mayor of the City of St. Louis, appointed to fill a vacancy created by the death of the City Treasurer, Henry C. Menne, who was elected to that office at the general election in November of 1934.

The laws relating to the election of County Treasurers, as same was enacted by the 46th General Assembly found in the Laws of Missouri 1911, page 163 as follows:

"On the Tuesday after the first Monday in November, 1912, and every four years thereafter, there shall be elected by the qualified voters of the several counties in this state a county treasurer, who shall be commissioned by the county court of his county, and who shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election, and shall hold his office for a term of four years, and until his successor is elected and qualified, unless sooner removed from office; Provided, that in counties having adopted, or that may hereafter adopt

township organization, the term of office of said treasurer shall be extended to the first day of April next after the election of his successor."

This section continued in force as Section 12130, R. S. Mo. 1929 until the Session of 1933. At the Session of 1933 (pages 338 and 357), the office of County Treasurer was abolished in certain counties. In 1937, at pages 425, 427, the appointment of County Treasurers by the Governor in counties of under 40,000 and between 75,000 and 90,000, was provided for, and the election of a County Treasurer in all other counties was provided for. This is provided by Section 12130c (Laws of 1937, page 426).

"Section 12130c. Election of county treasurers in counties of less than 40,000 if under township organization, and in counties of 40,000 or more, except in counties of 75,000 to 90,000 - term. -

"On the Tuesday after the first Monday in November, 1940, and every four (4) years thereafter, there shall be elected by the qualified voters in all counties of this State, now or hereafter having a population of 40,000 or more inhabitants according to the last Decennial United States Census, (except in counties having 75,000 and not more than 90,000 inhabitants) and in all counties of less than 40,000 inhabitants if under township organization, a county treasurer, who shall be commissioned by the County Court of his County, and who shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election, and shall hold his office for a term of four years, and until his successor is elected and qualified, unless sooner removed from office: Provided, that in counties having adopted or that shall hereafter adopt township organization, the term of office of said treasurer shall be extended to the first day of April next after the election

of his successor. Provided further, that the present county treasurers shall remain in office until their successors are elected or appointed and qualified, unless sooner removed from office."

The section of the charter of the City of St. Louis pertaining to the office of City Treasurer is found in Section 1, Article 8 of the St. Louis Charter, which is as follows:

"The mayor shall appoint the following officers at his convenience, to hold for the term for which he was elected and until their successors qualify: assessor, collector, treasurer, supply commissioner, register, city counselor, city marshal, city court judges, clerk of city courts, president board of public service, director of public utilities, director of streets and sewers, director of public welfare, and director of public safety."

Your inquiry raises the question as to whether the office of City Treasurer of St. Louis is a municipal or county office. If a municipal office, then the provisions of Section 1 of Article 8 of the Charter, supra, apply, and if a county office, then the provisions of Section 12130c, Laws Mo. 1937, p. 426, supra, apply.

We find that the courts of this state have not passed on the precise question. However, in the case of *State ex inf. vs. Koeln*, 192 S. W. 748, 270 Mo. 174, l.c. 185, 186, the court en banc had before it the provisions of the above section of the City Charter as it related to the office of County Collector. In that case, the court held that the City Collector of the City of St. Louis is a county officer, one of the reasons therefor being that the Collector performed a governmental function of the State in the collection of State revenue. The court in its opinion said:

"The process of logic by which is determined whether the Collector of the city of St.

Louis is a city officer or a State officer is apt to become confused by reason of the singular and peculiar relationship which the city of St. Louis bears to the State. Loosely speaking any officer elected by the suffrage of the city of St. Louis might be termed a city officer, at least in the sense that he is elected by the vote of the city. The character of the electorate, however, should not necessarily determine the character of the office. The territory confined within the boundaries of the city of St. Louis forms a political subdivision of the State. This territory has no county organization in the ordinary use of that term, but by the Constitution the said city is to 'collect the State revenue and perform all other functions in relation to the State in the same manner as if it were a county as in this Constitution defined.' If this political subdivision of the State were styled a county no confusion would arise in arriving at the conclusion that the person whose duty it was to collect the State taxes was an officer of the State and that his election would be a subject of legislative control.

"Why then should the election of the Collector of the Revenue of the City of St. Louis (a separate political subdivision of the State which, under the Constitution, bears the same relationship to the State as a county), who, at least so far as collecting the revenue ordinarily collected by a county collector is concerned, performs the same governmental function, be controlled by a law different from that which controls the election of collectors in the other political subdivisions (counties) of the State? No reason is apparent why the election of one should be controlled by a law different from that applying to other officers exercising a like governmental function, and none can be said to exist unless perchance the power of control over the election of this officer in the city of St. Louis was, by the Constitution, permanently transferred to the charter making power of said city."

The case of State ex rel. McAllister vs. Dunn, 277 Mo. 38, adopts the rule that general statutes referring to the office of Treasurer of any County in the State refer to the office of the Treasurer of the City of St. Louis by virtue of the 19th clause of what is now Section 655, R. S. 1929. The portion of the opinion so referring is found on page 41, as follows:

"This case involves a construction of Section 3765, Revised Statutes 1909, which reads thus: 'No sheriff, marshal, clerk or collector or the deputy of any such office, shall be eligible to the office of treasurer of any county.'

"It is conceded that under the 19th clause of Section 8057, Revised Statutes 1909, Section 3756 applies to the City of St. Louis.

"Relator's position is that under Section 3756 a deputy collector is incapable of being lawfully chosen treasurer. Respondent's contention is that a deputy collector may be elected while still such deputy and may take the office if he is not a deputy collector at the time he actually assumes the office."

The court then proceeded to hold that Mr. Dunn was disqualified from holding the office because he had been a deputy collector.

This case was decided by the Supreme Court en banc on February 15, 1919. That case was a quo warranto to oust John W. Dunn from the office of Treasurer of the City of St. Louis to which he had been elected at the election held in November 1918. The court ruled that Mr. Dunn should be ousted because he was ineligible to the office, but did not question in anywise the validity of the election of the Treasurer of the City of St. Louis at the general election as provided for County Treasurers. The court, and all the parties, assumed that the election was valid, that the only defect was Mr. Dunn's personal disqualification because he was a deputy collector.

At neither revision, Session of 1919, nor 1929, was any change made in this language of the statutes providing for the election of County Treasurers, to exclude the City of St. Louis from the definition of a County. Down to and including the election of Mr. Henry C. Menne, whose death has recently caused a vacancy in the office of the City Treasurer, no Mayor and no political party organization has brought any proceeding to determine whether or not the office of the City Treasurer of the City of St. Louis is an elective office under the general state law pertaining to County Treasurers, or is an appointive office under the charter. All have acquiesced in the construction that the state law provisions pertaining to the election of County Treasurers applied to the Treasurer of the City of St. Louis. In this situation the course of conduct by the acquiescence in the election of the City Treasurer, by city officials, political parties, the Supreme Court and the Legislature established precedents of construction that cannot be disregarded.

The court, in discussing the weight to be given to the construction of a statute by election officials, in the case of *In re Graves*, 30 S. W. (2d) 149 (Missouri Supreme Court en banc) said at l.c. 154:

" ** great weight should be given to the well-known 'practical construction' (25 R.C.L. Sec. 274, p. 1045) adopted by all persons charged with duties pertaining to general elections ** "

It is conceded that if the duties of the City Treasurer are only municipal, then he is a city officer and his appointment is controlled by the provisions of the city charter, *supra*. It should also be conceded that if his duties are governmental and municipal, then under the holding of the *Koeln* case, *supra*, he is a county or State officer and his election is controlled by Section 12130c, *supra*.

The various county treasurers of the State have governmental functions to perform by virtue of the provisions of the following sections of the Revised Statutes of Missouri of 1929.

Section 9243 provides in part as follows:

"It is hereby made the duty of the several county courts of this state to diligently collect ** also, the clear proceeds of all penalties and forfeitures, and all fines collected in the several counties for any breach of the penal or military laws of this state, *** "

Section 9246 provides in part as follows:

"The county treasurer shall collect, or cause to be collected, all school moneys mentioned in Section 9243, and all other moneys for school purposes in his county, and shall give the party paying duplicate receipts therefor, and said party shall file one of said receipts with the county clerk, who shall file the same and charge the same to the county treasurer; *** "

Section 9255 pertaining to school funds provides as follows:

"When any portion of principal or interest, or both, may be collected, as provided in any of the foregoing sections, it shall be paid into the county treasury; and it shall be the duty of the treasurer to give the person making payment thereof duplicate receipts, specifying the sums paid and on what account. One of said receipts shall be given to the clerk of the county court, who shall file and preserve the same in his office, charge the treasurer with the amount, and credit the payment to the party on whose account it is made on his bond and mortgage."

On the question of the governmental duties of the County Treasurer relating to the payment of criminal costs

which are paid by the State, we find that Section 3853 provides as follows:

"All criminal cost fee bills shall be certified for payment as hereinbefore provided, and in addition thereto the circuit clerks of each county and clerks of all criminal courts shall make copies of all original fee bills certified to the state auditor for payment, and shall file the same with the treasurers of their respective counties, and the city of St. Louis, at the time of transmitting the original for payment, and when certified to the state auditor for payment, he shall draw his warrant on the state treasurer and transmit the same to the treasurer of the county from whence the bill originated, or the city of St. Louis, and when any criminal cost fee bill shall be certified to the county court, or the auditor of the city of St. Louis, for payment, the county clerk, or the auditor of the city of St. Louis, shall, when the same is allowed, draw a warrant on the county treasurer, or the treasurer of the city of St. Louis, in payment thereof, and deliver the same to the county treasurer, or to the treasurer of the city of St. Louis, together with a list of the names of the various parties to whom the fees are due, stating the amount due each person. The treasurers, on receipt of any such warrants and fee bills, shall record the fee bills in a well-bound book, arranged with appropriate headings, so that the same shall correspond, as near as may be, with the accounts required to be kept by other officers in section 11822, R. S. 1929."

Article 9, Section 20 of the State Constitution provides that the scheme and charter of the city of St. Louis "shall become the organic law of the county and city", as follows:

"The city of St. Louis may extend its limits so as to embrace the parks now without its boundaries, and other convenient and contiguous territory, and frame a charter for the government of the city thus enlarged, upon the following conditions, that is to say: The council of the city and county court of the county of St. Louis shall, at the request of the mayor of the city of St. Louis, meet in joint session and order an election, to be held as provided for general elections, by the qualified voters of the city and county, of a board of thirteen freeholders of such city or county, whose duty shall be to propose a scheme for the enlargement and definition of the boundaries of the city, the reorganization of the government of the county, the adjustment of the relations between the city thus enlarged and the residue of St. Louis county, and the government of the city thus enlarged, by a charter in harmony with and subject to the Constitution and laws of Missouri, which shall, among other things, provide for a chief executive and two houses of legislation, one of which shall be elected by general ticket, which scheme and charter shall be signed in duplicate by said board or a majority of them, and one of them returned to the mayor of the city and the other to the presiding justice of the county court within ninety days after the election of such board. Within thirty days thereafter the city council and county court shall submit such scheme to the qualified voters of the whole county, and such charter to the qualified voters of the city so enlarged, at an election to be held not less than twenty nor more than thirty days after the order therefor; and if a majority of such qualified voters, voting at such election, shall ratify such scheme and charter, then such scheme shall become

the organic law of the county and city, and such charter the organic law of the city, and at the end of sixty days thereafter shall take the place of and supersede the charter of St. Louis, and all amendments thereof, and all special laws relating to St. Louis county inconsistent with such scheme."

The scheme hereinabove referred to for the operation and reorganization of the governments of the city and county of St. Louis and the adjustment of their relations went into effect on October 22, 1876.

Section 32 of said scheme, in providing that in all cases where a public officer was required to pay any money into the county treasury of St. Louis County, such officer would be thereafter required to pay such money into the treasury of the City of St. Louis, including all fines, penalties and forfeitures, said:

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"In all cases, where, according to the laws in force up to the time when this scheme shall go into operation, any public officer or other person was required to pay any money coming into his hands from any source whatever into the county treasury of St. Louis county, and where it is not otherwise provided in this scheme or the charter framed under it, such officer or person shall, after the time aforesaid, pay all such money into the treasury of the city of St. Louis at or within such times as he was theretofore required to pay the same into the county treasury; and if no time shall be prescribed by law for any such payments, then he shall pay the same monthly on the first Monday of each month, into said city treasury, and shall take triplicate receipts therefor, stating the account on which such payment was made, one of which he shall file in the city auditor's office

and one with the comptroller, who shall charge the treasurer with the amount so paid; and the said auditor and treasurer shall keep accounts showing the account on which such payments were made and the source from which the money was derived. All such money shall be applied and used for the purposes for which it was collected or for which it was made applicable by law and in all cases where such money is not set apart or appropriated by law for specific purposes the municipal assembly of the city may appropriate it to such municipal uses as it may deem proper; provided, however, that all fines, penalties, and forfeitures collected or accruing in the county of St. Louis or an account of said county or the people thereof shall be paid in the manner and at times aforesaid into the county treasury of said county, and duplicate receipts shall be taken as aforesaid by the officer or person paying the same, one of which he shall file with the county clerk of said county, who shall charge the treasurer with the amount so paid, and such money shall be appropriated and used as it is or may be provided by law; and provided further that if any public officer or other person shall, at the time this scheme goes into operation, be in default in the payment of any such money into the said county treasury, he shall immediately pay the same into the said city treasury in the manner aforesaid, and the same shall be disposed of as herein provided."

From the foregoing, it is evident that the City Treasurer of St. Louis, Missouri is performing governmental functions and is therefore a County or State officer within the meaning of the law. It is the opinion of this department that candidates for the office should be placed upon the official ballot to be voted at the November 1938 general election.

Your next question is as to procedure - should we hold that the names of the candidates for City Treasurer be placed on the ballot.

We are of the opinion that the election of the successful candidate should be certified, and it be left to him to institute quo warranto against the incumbent appointed by the Mayor for the purpose of testing the title to the office. The successful candidate would thus not be harmed and the issue would be squarely between the successful candidate and the present incumbent.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting Attorney General)

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