

TOWNSHIPS: (1) May recover books and records from outgoing trustee by replevin or mandamus; (2) Governor may order audit of township records.

August 3, 1939

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Walton Bank Building
Butler, Missouri



Dear Sir:

We wish to acknowledge your request for an opinion under date of July 25th, as follows:

"The Township Board of Lone Oak Township here in Bates County has asked me to write you for an opinion on the matter of township law. In April in the township election in Lone Oak Township a new trustee was elected to office. One of the board members was also new and the other member elected had previously served. The trustee turned over to the newly elected trustee some money which he claimed belonged to the township and a new township trustee book which covered only the year of 1938. The old trustee refused at that time, and has refused up to date to turn over to the new trustee the records, warrants, vouchers and other papers and books covering the previous year or years and pertaining to township affairs in Lone Oak Township. It appears that from what has been turned over to the new trustee there is a shortage of \$53.00 in the accounts of one of the school districts in Lone Oak Township. The old trustee more or less admits that this is the case and stated that he wanted to repay that as quickly as possible. Up to date he has not done so. It is almost impossible for the township board to conduct the business of the township or to understand the financial condition of the town-

ship unless and until the complete records, warrants, etc. which were held by the old trustee are turned over to the new trustee and township board. Section 12290, Revised Statutes of Missouri for 1929, provides that the expiration of his term of office of township trustee shall turn over to his successor all moneys, books and papers belonging to the office. Section 12284, Revised Statutes of Missouri for 1929, also provides that outgoing officers shall turn over to their successors all papers, etc. belonging to such office.

Under the above statement of facts and in view of the statutes pertaining thereto the Township Board of Lone Oak Township would like an opinion from your office as to how the township board can proceed to force or compel the old trustee to turn over to the new trustee and board all of the books, papers, records, warrants, etc. belonging to the township and which may have accrued to the old trustee by virtue of his office. Also, how can the township board go about securing an audit of the books and record of the township in order to know the amount, if any, of the shortage which it is expected the records will disclose.

I would appreciate an opinion on these matters just as quickly as you can get around to it because until the township knows the proper procedure it is impossible for the township business to be discharged satisfactorily. I might add that I have advised the township board and stated it could institute mandamus proceedings against the old trustee to compel him to deliver the papers but the board feels an opinion from your office would give it more authority to proceed and I am inclined to agree with the board."

Section 12284, R. S. Mo. 1929, provides:

"Whenever the term of office of any township officer shall expire, and others are elected or appointed and qualified as their successors, such successors shall, immediately after

entering upon the duties of their office, demand and receive from his or their predecessors, or their legal representatives, all the books, papers and money under his or their control belonging to such office, and such books, papers and other property shall be delivered upon oath that the same are all the moneys, books, papers and other property under his control belonging to such township; duplicate receipts shall be given the outgoing officer for the same, who shall retain one copy and deliver the other to the township clerk, who shall charge the incoming officer with the value thereof."

Section 12290, R. S. Mo. 1929, provides:

"He shall keep a correct account of all moneys coming into his hands by virtue of his office, from what source received, and what amount, of the amount paid out, to whom paid, and on what account, in a book to be kept by him and provided for the purpose by the township; said book to be kept in such a manner as to show the amount of money in his hands belonging to each school district or fractional part in the township and the amount of road money belonging to the township. He shall make settlement annually between the twentieth day of March and the fifteenth day of April with the county clerk of all moneys received by him on account of schools, showing how the same have been disbursed, and he shall settle with the county treasurer within twenty days after the apportionment of the school funds to the school district, and receive all money in the hands of the county treasurer belonging to his township, and receipt for the same, and shall pay all warrants drawn on him by the board of school directors in his township out of the funds belonging to the district, making the order, and he shall not pay any money out belonging to any other fund than that mentioned in the

warrants, and he shall file with the township clerk on or before the day of the regular meeting of the township board in April a detailed statement of all money by him received and paid out, to whom and out of what fund, and the amount on hand, and at the expiration of his term of office he shall turn over to his successor all moneys, books and papers belonging to the office, and take duplicate receipts for the same, one to be filed with the township clerk, the other to be retained by himself."

Under the above sections, township officers, including the trustee and ex officio treasurer, must, at the expiration of their terms of office, turn over to their successors all books, papers and moneys belonging to the office.

I.

Your first question is how the township board can proceed to compel the old trustee to turn over to the new trustee and board all the books, papers, records, warrants, etc. belonging to the township and which may have accrued to the old trustee by virtue of his office.

We are assuming for the purpose of this opinion that the newly elected trustee is properly qualified for office.

46 C. J., Section 216, p. 1009, declares that:

"It is the duty of an outgoing officer to surrender to the proper governmental officer or agent the records and other paraphernalia of the office, and such duty may be enforced by mandamus, or replevin may lie."

In the case of *Kirkwood v. Allen*, 120 S. W. 641, 138 Mo. App. 473, defendant, the duly elected and qualified collector of revenue of the City of Kirkwood, resigned and his resignation was accepted by the mayor, who thereafter appointed his successor until the next election. After the successor had qualified

the city made demand on defendant for the books, papers, etc., but the latter refused to surrender them, wherein suit in replevin was brought for possession thereof. Judgment was entered for the city, and the Missouri Court of Appeals, in affirming the judgment, said:

"Having no substantial foundation and no possible justification for retaining the public documents, defendant insisted on putting the city and its authorities to the cost and trouble and inconveniences of this suit."

And in the case of *State ex rel. Cannon v. May*, 106 Mo. 488, l. c. 509, the court, in holding that where the title to office is uncontested mandamus will lie to compel the delivery of books and papers belonging to the office, said:

"It is, however, also well settled that where the relator holds an uncontested title to a public office, or his title has been adjudicated and finally established by a competent tribunal, and he is in possession of the office, that mandamus will lie to compel the delivery to him of the books and papers belonging to his office by his predecessor in office, who has refused his demand therefor. State ex rel. v. Trent, 58 Mo. 571."

From the foregoing, we are of the opinion that the township board of Lone Oak Township in Bates County may resort to a suit in replevin, or the newly elected trustee may bring a suit in mandamus, since title to office is uncontested, to compel the old trustee to turn over to the new trustee and board all of the books, papers, records, warrants, etc., belonging to the township and which accrues to the old trustee by virtue of his office.

II.

Your second question is how the township board can go about securing an audit of the books and records of the township.

We find no statute providing for audits of the books and records of the township other than the authority conferred by the legislature on the governor when, in his judgment, such audit is for the public interest of the state.

Laws of Missouri, 1933, Sections 1 and 2, page 162, provides as follows:

"The Governor may at any time, when in his judgment the public interest of the state will be conserved, select competent auditors or accountants to audit the accounts of any department, office, commission, board, bureau, institution, or any subdivision of the state; also road districts, school districts, townships, municipalities and counties receiving for or from the state any money.

It shall be the duty of every public official, agent or employee of the state, and every official and employee of any county, municipality, township, school district or road district to permit such auditor or accountant to have access to the accounts, records, documents, vouchers and papers in the care or custody or under the control of any public official, or any employee of the state or any subdivision thereof upon any subject relating to the condition, management and expenses of the office, department, board, bureau, commission or institution being audited."

From the foregoing, we are of the opinion that the township can obtain an audit of the books by convincing the governor that the public interest will be conserved by ordering an audit of said township.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General