

OPTOMETRY:
OPTOMETRY BOARD:
OFFICERS:

Person appointed to Board must file oath
of office before he is qualified.
Incumbent remains member of Board until
successor qualifies.

August 2, 1939

Dr. F. J. Guilbault
423 North Broadway
St. Louis, Missouri

Dear Sir:

This department is in receipt of your request
for an official opinion which reads as follows:

"I was appointed a member of the
Optometry Board of Missouri for a
term ending June 30th, 1936. On
May 26, 1939, J. T. McWay was
appointed as a member of the
Optometry Board of Missouri, to
succeed me. He was confirmed by
the Senate on June 20, 1939. Accord-
ing to the records of the office of
the Secretary of State, he has not
qualified for the office to which he
was appointed.

"In view of the fact that my succes-
sor has not qualified, I request that
you give me an opinion as to whether
or not I am still a member of this
board."

Section 13498, R. S. Missouri 1929, provides in
part as follows:

"The governor, with the advice and
consent of the senate, shall appoint
five persons from among such practic-
ing optometrists of the state as have
had not less than five years' practical



experience in optometry as defined in section 13501 of this chapter, who shall constitute the state board of optometry. * * * * *
The term of the members of said board successively, shall expire, on the 30th day of June of each year and the term of all members after the first board is appointed shall be for a period of five years and until their successors shall be appointed and qualified. * * * * *
The members of the state board of optometry, before entering upon the discharge of their duties, shall make and file with the secretary of state, the constitutional oath of office. * * * * *

Article XIV, Section 6, of the Constitution of Missouri provides as follows:

"All officers, both civil and military, under the authority of this State, shall, before entering on the duties of their respective offices, take and subscribe an oath, or affirmation, to support the Constitution of the United States and of this State, and to demean themselves faithfully in office."

This department is informed by the Secretary of State that J. T. McWay, the person appointed to succeed you as a member of the State Board of Optometry, has not filed the constitutional oath of office with the Secretary of State which is required by Section 13498 quoted above.

The necessity that an appointee take an oath of office before entering upon the duties of the office is recognized in 22 R. C. L., page 448, wherein the rule is succinctly stated as follows:

"Where an appointee is required to take an oath of office he cannot be considered as qualified unless he takes such oath."

In State ex rel. Hull v. Gray, 91 Mo. App. 438, the court said at l. c. 444:

"Taking an official oath may be said to be a prerequisite to the right, de jure, to hold an office. The oath of office marks the entrance upon the duties of an officer. And so we find that all officers under the authority of the State, before entering on their duties, must take and subscribe an oath to faithfully demean themselves in office and support the Constitution of the United States and of this State. Section 6, article 14."

In view of the above authorities it will be seen that Dr. McWay, since he has failed to file his oath of office with the Secretary of State, as required by the statutes and the Constitution, is not at the present time a member of the State Board of Optometry. He must fulfill all the requirements of the statute and the Constitution before he can be considered a member of such board.

The question next arises as to what is your status as incumbent member of the board. As stated above, Section 13498, which provides for the state board of optometry, states that each member of the board shall serve "until their successors shall be appointed and qualified." Article XIV, Section 5 of the Constitution of Missouri provides as follows:

"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 11196, R. S. Missouri 1929, provides as follows:

"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."

These provisions are interpreted in State ex inf. v. Williams, 222 Mo. 268, as follows (l. c. 285):

"* * * * The plain, unequivocal import of this section of the Constitution is, that when the regular term expires, the office becomes, in the eye of the Constitution, vacant, but with authority to the incumbent, already qualified, to continue by virtue of such previous qualification, made effective for the purpose by the Constitution, to discharge the functions of the office until he is succeeded in the way preferred by the people, as pointed out in the Constitution made by them, and in the laws made in pursuance of that instrument.' * * * "

In the recent case of Langston v. Howell County, 79 S. W. (2d) 99, l. c. 102, our Supreme Court spoke as follows:

"* * * 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 statutory provisions, supra, he holds the office as a de jure officer (46 C. J. p. 969) and by the same tenure, after the prescribed term, until the right of his duly chosen and qualified successor attaches. * * * * *

Therefore, since your successor on the State Board of Optometry, although he has been appointed, has not qualified because he has failed to file the oath of office with the Secretary of State as required by law, you are still a member of the State Board of Optometry and will continue as such until your successor qualifies.

CONCLUSION.

It is, therefore, the opinion of this department that a person appointed to the State Board of Optometry must file an oath of office with the Secretary of State, and until he so does, he is not a member of said board. Until the person so appointed does qualify, the incumbent member whose place he is to take remains as a member of the board and is vested with all the powers and duties of such members.

Respectfully submitted

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APPROVED:

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