

CHIROPRACTIC BOARD:

Member whose term expires and office is filled by another's appointment is out of office.

January 21, 1939



Honorable T. C. Oyler, D. C.  
President, State Board of Chiropractic Examiners  
Brookfield, Missouri

Dear Sir:

We acknowledge your request for an opinion dated Jan. 20, which reads as follows:

"I am writing you to find out the present status of the State Chiropractic Board. Dr. Keller was appointed January 1, 1934 and confirmed at the 1935 Legislative session. His term expired January 1, 1937. Dr. T. C. Oyler and Dr. Geer were appointed January 1, 1935 and confirmed by the 1935 Legislature, their terms expiring January 1, 1938. Dr. Trotter and Dr. Fontana were appointed January 1, 1933 and were confirmed by the 1933 Legislature. The terms of the last two expired January 1, 1936, when they were reappointed, but no action taken by the Senate to confirm them.

No successor has been appointed to succeed Dr. Keller, Dr. Geer or Dr. Trotter. The writer, Dr. Oyler, was appointed January 1, 1939 to succeed Dr. Fontana. The other members of the Board will soon be appointed.

Should any business occur which demands action, would Dr. Fontana be considered a member of the Board since he was dropped on January 1, 1939? And also would he continue as Secretary of the Board and would his salary continue until the Board meets and reorganizes?"

Article 5, Section 11, Missouri Constitution provides:

"When any office shall become vacant, the Governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed and qualified according to law."

Article 14, Section 5, Missouri Constitution 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 13547 R. S. Mo. 1929, provides as follows:

"A state board of chiropractic examiners is hereby created, consisting of five persons, not more than two of whom shall be graduated from the same school or college of chiropractic, to be appointed by the governor, with the advice and consent of the senate, in the following manner, to-wit: Within thirty days after the passage of this law, the governor shall appoint five persons as aforesaid who shall be chiropractic practitioners, having practiced chiropractic continuously in this state for a period of at least two years prior to such appointment. Provided, that no person shall be appointed to the state board of chiropractic examiners who practices any other method of healing than chiropractic as herein defined. They shall constitute the first board of chiropractic examiners, their term of office shall expire, one in one year, two in two years, and two in three years, from the date of appointment. At the expiration of the term of office of any member of said board the governor shall appoint a member for a term of three years. All vacancies shall be filled by the governor in like manner, and the person appointed to fill such vacancy shall serve for the unexpired term only."

Laws of 1933, page 326, Section 1, provides as follows:

"The Governor shall have power and he is hereby authorized to remove from office, without assigning any other reason therefor, any appointive state official required by law to be appointed by the Governor, whenever in his opinion such removal is necessary for the betterment of the public service, but the Governor may, at his discretion, in any order of removal which he may make under authority of this act, assign additional and more specific reasons for such removal."

In the case of State ex inf. v. Lund, 167 Mo. 228, 66 S. W. 1062, 37 S. W. 572, the respondent Lund contended, that having been appointed for a term of 2 years, he had the constitutional right to hold over until the successor be appointed and confirmed, but the court thought otherwise and at l. c. 242 said:

"No one will contend that that provision of the charter is in conflict with the Constitution, and if it is valid and the term of office of those officers who were appointed under that provision expired at the expiration of one year from the time of their appointments, it must logically follow that those who were thereafter appointed for two years, in the absence of a provision in the charter that they are to hold until their successors are appointed and qualified, held for two years only from the time of their appointments,  
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#### CONCLUSION

This department is of the opinion that the action of Governor Stark appointing Dr. Oyler on January 1, 1939 to succeed Dr. Fontana on the State Chiropractic Board now eliminates Dr. Fontana from membership on said board. After January 1, 1939, it would not be legal for Dr. Fontana to act as Secretary of the

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board or draw any salary as Secretary of the board, and this is true even though the new board has delayed its reorganization until after that date.

Respectfully submitted,

WM. ORR SAWYERS  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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