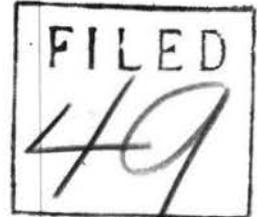


COUNTY TREASURER: Abolishing Township organization, in counties operating under township organization law, ends term of County Treasurer and Ex Officio Collector.

September 6, 1940

Honorable J. S. King  
Treasurer and Ex Officio Collector  
Texas County  
Houston, Missouri



Dear Mr. King:

This will acknowledge receipt of your letter of August 15th, 1940 in which you ask for an opinion upon the following questions:

"General, thank you to construe that part of Sec. 12346, Page 886, laws 1939, which reads as follows: 'And all laws in force in relation to counties not having township organization shall immediately take effect and be in full force in such county.'

"Does that law mean that the office of Treasurer and Ex-Officio Collector would be abolished then, and that a Treasurer and Collector would be appointed to fill the offices of Treasurer and Collector, not permitting me to serve out my term? Who has the authority to make the appointments?"

The election of county treasurers in counties operating under township organization is provided for in Section 12130c, page 426, Laws of 1937, and is as follows:

"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."

Section 12130, page 425, Laws of 1937, creates the office of treasurer in counties not under township organization and the election of treasurers in such counties is provided for in Section 12130a, Laws of 1937, page 425, which section is herein set out:

"On the Tuesday after the first Monday in November, 1938, and every four (4) years thereafter there shall be elected by the qualified voters of the several counties in this state,

now or hereafter having a population of less than 40,000 inhabitants and in counties having a population of 75,000 and less than 90,000 inhabitants, according to the last Decennial United States Census, 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 (4) years, and until his successor is elected and qualified, unless sooner removed from office. Provided, that nothing in this section shall apply to counties under township organization."

These three sections were all part of House Bill 20, enacted by the General Assembly of 1937, which repealed the then existing laws pertaining to these offices and enacted these new sections. It will be observed that while the term of county treasurers in counties operating under township organization and the term of the treasurers not under township organization are each for four years, they are elected at different times. Also Section 12130 above mentioned specifically provides that it has no application in counties not under township organization.

The questions contained in your request are all answered by the case of, State of Missouri, ex inf. Barker v. Duncan, et al., 265 Mo. 26. This was an original proceeding in quo warranto brought to clarify the rights of various claimants to office following an election in Butler County at which township organization was abolished. One of the defendants, Barnhill was the duly elected and acting treasurer at the time of the election; defendant Duncan had been appointed collector by the county court under a statute which then existed; the other defendants were the various township collectors.

The portion of Section 12346, page 886, Laws of 1939, referred to in your request follows the wording of Section 9 of Article IX of the Constitution, and the Supreme Court, in the above mentioned case at pages 41 and 42, said:

"Is section 9 of article 9 of the Constitution self-executing? It is fairly plain that so much of this section as says that 'in any county which shall have adopted "township organization," the question of continuing the same may be submitted to a vote of the electors of such county at a general election, in the manner that shall be provided by law,' is by no possible view, or by any recognized canon of construction, self-executing. It is equally clear on the other hand that so much of this section as provides that 'if a majority of all the votes cast upon that question shall be against township organization, it shall cease in said county; and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in said county,' is self-executing.

"This view is held upon the first proposition, viz., that the portion of this section first above quoted is not self-executing, for reasons that are plain and conclusive. The clause first above quoted does not purport to be self-executing; on the contrary upon its face and by its very words it specifically relegates to the Legislature the duty of providing by law for the manner of submitting the question of discontinuence of township organization to the electors of a county having theretofore adopted it. It would be a contradiction in terms to hold it self-enforcing and

the citation of authority could add neither weight nor clarity to this view. On the other hand the last clause is just as obviously self-executing. For it is clear that it needs no statute to put it in force. Any statute about the matter must needs follow the precise words or the very substance of the Constitution itself and no statute which could be passed could clarify the matter in any respect whatever. Indeed, the clause under discussion merely expresses a status which will instantly result from the election required to be held. Statutory language would be impotent to add aught to the Constitution's expression of this resulting status, and so the clause is self-executing. It is a provision complete in itself and needs no legislation to put it in force. (Davis v. Burke, 179 U. S. 399; Hyatt v. Allen, 54 Cal. 353; Eau Claire Nat. Bank v. Benson, 106 Wis. 624.) For automatically upon holding an election, the conditions required being met in the result of such election the status mentioned instantly ensues."

And, at page 49, the Court further said:

"Not to pursue the matter further, we are of the opinion that the result of the election held in Butler county in November, 1914, was to discontinue township organization therein and that respondents Barnhill, Harwell, Osborn, Reading, Kearby, Gardner, Ratcliff, Deaton, Burger and Phillips, were thereby divested of authority to act as ex-officio collector of the revenue of said Butler county, and as collectors of the several townships therein, respectively, and therefore the writ

of ouster as to the above-named respondents and each of them, should be awarded."

And further, on pages 50 and 51, in ruling upon the question as to the proper authority to fill the vacancy created by the cutting short of the term of the county treasurer, the Court used the following language:

"Briefly, we reach this conclusion upon these grounds: The last clause of section 9, of the Constitution, supra, provides that when township organization is voted out, at once thereupon 'all laws in force in relation to counties not having township organization shall take effect and be in force in such county.' The view contended for by relator would have the effect of placing such counties as voted township organization out, back into the category of ordinary counties to be governed by the usual and ordinary laws; while the insistence of learned counsel for respondent Duncan would make of such a county a thing apart from all ordinary counties, with different laws to govern it. The makers of the Constitution saw no reason apparently, as we see none, why a county which had before had township organization, but which had elected to return to the common fold, should by that fact alone be set apart in a wholly different category. So they provided clearly that all the usual laws governing ordinary counties should reattach to and govern counties relinquishing township organization, immediately upon their voting it out. The 'laws in force in relation to counties not having township organization,' which laws as we see the Consti-

tution, automatically applied to Butler county, provided at the time of the accrual of this vacancy and at the time the Governor filled it and now provide that as to an office like this 'such vacancy shall be filled by appointment by the Governor.' This being the law which at all of said times applied to 'counties not having township organization,' such law applied ipso facto and immediately to Butler county, the moment said county voted out township organization. Section 11 of article 5 of the Constitution in nowise aids respondent Duncan here. This for the reason that section 9 of article 9 plainly puts Butler county back into the ordinary category of counties the moment it abandoned township organization which had served to take it out of this common category. Section 11 of article 5 of the Constitution says that the Governor shall appoint persons to fill all vacancies in office, 'unless otherwise provided by law.' Here Butler county was required to step back into the ordinary line of counties and reassume all laws for its government which applied to the ordinary county, and as to such counties, i.e., the ordinary county, the appointment of all officers had already been 'otherwise provided by law,' pursuant to a general law which applied to all 'counties not having township organization.' (Sec. 5828, R. S. 1909.)

"So we think there can be no two opinions, that the power of appointment here lay with the Governor and not with the county court; that so much of

section 11745 as prescribes a contrary rule is unconstitutional and therefore as to the respondent Duncan also the writ of ouster should be awarded. Let our writ of ouster go as to all of the respondents."

There is no special section of law directing any method for filling a vacancy in the office of county treasurer as there was at the time of the case above referred to for filling the office of county collector. There now exists the general section, 10216 of Art. 2, Chap. 61, R. S. Mo. 1929, authorizing the governor to fill, by appointment, vacancies where not otherwise provided. This section is as follows:

"Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any state or county office originally filled by election by the people, other than the office of lieutenant-governor, state senator, representative, sheriff or coroner, such vacancy shall be filled by appointment by the governor; and the person so appointed shall, after having duly qualified and entered upon the discharge of his duties under such appointment, continue in such office until the first Monday in January next following the first ensuing general election-- at which said general election a person shall be elected to fill the unexpired portion of such term, or for the ensuing regular term, as the case may be, and shall enter upon the discharge of the duties of such office the first Monday in January next following said election: Provided, however, that when the term to be filled begins or shall begin on any day other than the first Monday in January, the

appointee of the governor shall be entitled to hold such office until such other date."

Section 11 of Article 5 of the Constitution, mentioned in the above referred to case, is the same now as it was then. This section is as follows:

"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."

CONCLUSION.

Following the above cited case, it is the conclusion of this department that if the proposition to abolish township organization should carry the term of office of the county treasurer and ex officio collector would terminate and that a vacancy would be created which would be filled by appointment by the Governor in accordance with the provisions of Section 10216.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney-General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney-General

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