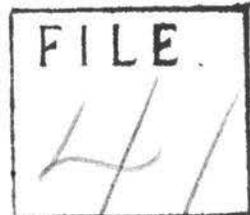


PRIMARY ELECTIONS: County clerk may accept the filing declarations of candidates to fill unexpired portion of term of county assessor volunteering for army services.

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June 1, 1942

Honorable W. H. Holmes  
Prosecuting Attorney  
Vienna, Missouri



Dear Mr. Holmes:

Under date of May 28, 1942, you requested an opinion from this office on the following question:

"I would like your opinion, for our County Clerk, upon the following situation, viz:--

"Our County Assessor, some few months ago, after completing his assessment and books for 1941, appointed a Deputy and soon thereafter volunteered in the United States Army and is now and has been for the past few months in a training camp in the State of Texas.

"Would this office be considered in such a situation that our County Clerk would be justified and properly doing his duty to accept filings for this office by candidates at the August primary, until the filing date closes?

"Due to the fact that it is just a short time until the filings close, I would appreciate as speedy a reply as possible."

In your letter you state the County Assessor "volunteered in the United States Army." It is assumed from this statement the Assessor voluntarily enlisted and was not inducted under the provisions of the Selective Service Act.

Recently this office furnished to Governor Donnell an opinion on the status of a county officer who volunteered for service in the United States Navy and a copy of that opinion is enclosed.

Supplementing this opinion it is desired to call attention to the following brief passages from Corpus Juris, Volume 46, page 979, paragraphs 130 and 132:

"It is generally held that a resignation may be conditional or prospective in character, although there is authority to the contrary. An undated resignation given with implied authority to fill in the date in case of future misconduct is effective upon its acceptance. A statement by an officer that he contemplates a resignation, or that his statement may be regarded as a resignation upon a certain contingency which does not occur, is without effect. A conditional resignation cannot be accepted except on the terms made by it, and, in the absence of a corrupt bargain, it is not unlawful for an officer to attach, as a condition of his resignation, the appointment of a certain other person as his successor."

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"A resignation of a public office, to be effective, must be made with the intention of relinquishing the office, accompanied by the act of relinquishment. It is not necessary that a resignation from a public office be couched in any particular words, it being only necessary that the incumbent evince a purpose to relinquish the office. Where no particular mode of resigning an office is provided by constitutional or statutory requirements, no formal method is necessary; it may be by parol, or it may be implied."

In the case of *Howell v. Gillespie*, 202 Ill. App. 447, it was held the turning in of jail keys and star by a police officer constituted an implied resignation. And in the case of *Barbour v. U. S.*, 17 Court of Claims, Respondents, at page 149, and following, it was held a trustee in bankruptcy who absented himself from the place of performance of his duties and performed no duties had impliedly

resigned.

Attention is next directed to Section 18, Article II of the Constitution of Missouri which requires an officer to personally devote his time to the performance of the duties of the office. It is a matter of common knowledge that persons who have voluntarily enlisted in the Army have entered into an agreement to perform military duties and be subject to military duties and discipline. Inasmuch as this requires constant attention to the performance of the duties incident to service in the Army and such duties would be performed at places other than Maries County, possibly outside the territorial limits of the United States, it would seem that by voluntarily agreeing to enter the military service and absent himself from the place of performance of his civil duties for a long space of time this officer has impliedly resigned his office and has abandoned it. If this is correct, there is a vacancy in the office of the County Assessor.

This vacancy should be filled in accordance with the provisions of Section 11,509, Revised Statutes of Missouri 1909, which 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, how-

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ever, 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."

as there is no special law relating to filling a vacancy in the office of county assessor occasioned by resignation and abandonment.

It will be observed the appointment by the Governor should be for a period ending on the first Monday in January following the next ensuing general election, or when the term of office begins on some other date the appointee of the Governor shall hold until such other date.

By referring to Section 10,945, R. S. Missouri 1939, it is ascertained the County Assessor enters into the performances of his duties on the first day of June next after his election.

Following this an appointee appointed at this time would serve until the first of June, 1943, at the general election held in 1942, a person should be elected either for the unexpired portion of the term remaining after June 1, 1943, or for the new term starting at that date.

Section 11,550, R. S. Missouri 1939, authorizes the filing of a written declaration by a candidate for office and Section 11,553, subsection 2, directs that such declaration of candidacy for county office shall be filed in the office of the county clerk of the county.

#### CONCLUSION

It is, therefore, the conclusion of the writer that the county clerk could properly receive the declaration of any person desiring to be a candidate for the office of county assessor for the portion of the term remaining after June 1, 1943, or the new term starting at that time as the case may be.

Respectfully submitted

APPROVED:

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ROY McKITTRICK  
Attorney General

W. O. JACKSON  
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