

JUSTICES OF THE PEACE: Beginning and ending of term.

November 10, 1942

Hon. Robert V. Niedner
Prosecuting Attorney
St. Charles County
St. Charles, Missouri



Dear Sir:

This is in reply to yours of recent date, wherein you request an opinion from this Department, as follows:

"The question is, whether justices of the peace serve four years or until their successors are duly elected and qualified, or whether they serve four years and until their successors are duly elected and qualified."

Section 5 of Article XIV of the Missouri Constitution, which relates to terms of officers, is 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 2525 R. S. Mo. 1939 provides for the election of justices of the peace in 1882 and that such justices shall hold the office for four years or until their successors are elected, commissioned and qualified.

Section 2530 R. S. Mo. 1939 provides that the justices of the peace are to be commissioned by the county court; that they hold the office for four years and until their

successors are elected and qualified.

Under Section 2531 when the county court has determined who has been elected as a justice of the peace it is the duty of the county court to immediately cause to be made out and delivered to the elected person the certificate of election.

Under Section 2532 if the justice of the peace does not qualify within twenty days after having received this certificate of election then the certificate is void.

Under Section 2534 it is the duty of the justice, after having received the certificate of election and within thirty days thereafter, before entering upon the discharge of his duties, to cause the certificate, with his oath endorsed thereon, to be recorded in the office of the clerk of the county court.

By Section 2537 the justice cannot begin to perform his official duties until his commission has been recorded.

By these sections it will be seen that the lawmakers have clearly provided that the justice of the peace shall begin his duties when he has received the certificate of election, taken the oath prescribed thereon, and has recorded the same.

While Section 2530 does indicate that the justice may hold his office for four years, yet, reading these other sections in connection with this section, there might be cases in which he would not hold his office for four years because his successor complied with the provisions of Sections 2525 to 2537, a few days sooner than did the incumbent. Since the law provides for certain numbers of justices of the peace in certain townships, then it would naturally follow that the qualification of the newly elected justice of the peace, would automatically end the term of the incumbent.

The provisions of Section 2525, supra, were before the Supreme Court in the case of *The State ex rel. The Attorney-General v. Ranson*, 73 Mo. 78. In that case the court went into the history of that section and the constitutional provisions hereinbefore referred to, were considered at l. c. 91, where the court made this statement:

"The first question is, what constitutes, under the law, the official term of justices of the peace? The statute in force now and when respondent was elected and qualified, provides that: 'Justices of the peace are to be commissioned by the county court, and shall hold their office for four years, and until their successors are elected and qualified.' The constitution of the State--5th section, 14th article--declares that: 'In the absence of any contrary provision, all officers now or hereafter elected or appointed, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified.' The stipulation of the parties shows that at the November election in 1876, the respondent was duly elected, commissioned and qualified as a justice of the peace within and for Kaw township, in Jackson county, Missouri, for the period of four years, and until his successor was duly elected or appointed and qualified. * * *"

In that case the justice of the peace received his commission and qualification on November 10th, after the general election. It appears that the construction which has been placed on the statutes applicable to justices of the peace in relation to the beginning of the term is that the term begins when the justice receives his commission and qualifies as directed by the foregoing statutes. Under the construction placed on this statute by the court in the case of Gage v. Vail, 73 Mo. 454, the term of the incumbent expires on the date that the successor is elected. At l. c. 455 the court, in speaking of judicial functions performed by the incumbent after his successor had been elected and qualified, said:

"* * * The judicial functions of G. W. Lewis ceased when his successor was elected and qualified, and conceding that

he made the entry of the judgment on his docket, it was more than six weeks after he had ceased to be a justice of the peace, and the judgment, therefore, has no validity whatever.
*****"

CONCLUSION

It is, therefore, the opinion of this Department that a justice of the peace serves until his successor is elected and qualified; that a justice of the peace is elected for a term of four years, but that if his successor is elected at the time prescribed by statute at the end of his term and qualifies at a time short of the full four year period to which the incumbent was elected, then the incumbent's term ends on the date that his successor qualifies.

Respectfully submitted,

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APPROVED:

ROY MCKITTRICK
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TWB:CP