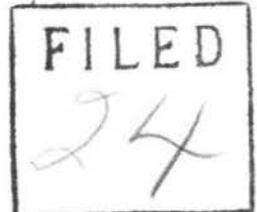


GOVERNOR)
PUBLIC SERVICE COMMISSION)
VACANCIES)

- 1) Vacancies in Commission shall be filled by the governor for the unexpired term.
- 2) Governor must submit name of appointee for confirmation to the Senate at the next general assembly whether in regular or special session.

December 22, 1943



Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri

Dear Governor Donnell:

This is to acknowledge receipt of your letter of December 21, 1943, as follows:

"Section 5580 of the Revised Statutes of Missouri of 1939, with reference to the public service commission, concludes as follows:

'Vacancies in said commission shall be filled by the governor for the unexpired term'.

"Your opinion, as soon as possible, is respectfully requested on the following question:

"Should the appointment of a person to fill an unexpired term in said commission be made subject to the advice and consent of the senate?"

Section 5580, R. S. Mo. 1939 provides as follows:

"The commission shall consist of five members who shall be appointed by the governor, with the advice and consent of the senate, and one of whom shall be designated by the governor to be and, upon being so designated, shall be chairman of said commission. Each commissioner, at the time of his appointment and qualification, shall be a resident of the state of Missouri, and shall have resided in said state for a period of at least five years next preceding his appointment and qualification, and he shall also be a qualified voter therein and not less than twenty-five years of age. One of said commissioners shall hold office for two years from the beginning

of his term of office and until his successor shall qualify; two of said commissioners shall hold office for a term of four years from the beginning of their terms of office and until their successors shall qualify, and two of said commissioners shall hold office for a term of six years from the beginning of their terms of office and until their successors shall qualify. The term of office of each commissioner shall begin on the date of the taking effect of this chapter, and the appointment of each of said commissioners shall be made and announced by the governor immediately after the taking effect of this chapter. The governor at the time of making and announcing the appointment of said commissioners, as well as in the commission issued by him to each of them, shall designate which of said commissioners shall serve for the term of two years, and which shall serve for the term of four years, and which shall serve for the term of six years, as aforesaid, and also which shall be the chairman of the commission. Upon the expiration of each of said terms, the term of office of each commissioner thereafter appointed shall be six years from the time of his appointment and qualification and until his successor shall qualify. Vacancies in said commission shall be filled by the governor for the unexpired term."

From an analysis of the aforementioned section it will be observed that in the opening sentence it is provided that the commission shall consist of five members who shall be appointed by the governor, with the advice and consent of the Senate. It will be further noted that the terms of office of the particular commissioner is staggered. It will be further noted that this section sets forth the qualifications that a person must have in order to be qualified as a commissioner. With these observations in mind we now direct our attention to the last sentence in the section which reads:

"Vacancies in said commission shall be filled by the governor for the unexpired term."

In arriving at the true intention of the legislature in placing this sentence in the section it is incumbent upon us to view the whole section together. For it is said in the case of Davis Construction Co. inc. v. State Highway Commission, 141 S. W. (2d) 214, 1.c. 221:

"It is a well settled rule that all parts of a statute must, if possible, be reconciled and all given meaning and effect, and that a party cannot take out isolated sections and disregard other and equally important sections of the statute."

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It is our view that whether this sentence had of been placed in the statute or not, the governor would have had the authority and the duty to appoint a person to fill the unexpired term, where one existed, and would of had this authority under Section 11, Article V of the Constitution which provides 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."

It will be noted from the reading of this provision that if the governor acted under this section that the person appointed would continue in office until a successor shall have been duly elected or appointed, and qualified, according to law, whereas, an appointment made in pursuance to the aforesaid sentence mentioned in section 5580 supra, the person appointed shall continue in office until the end of the unexpired term. In other words, the legislature may have had in mind when they placed this sentence in the section, that it was to definitely carry out their intention of staggering the terms of office of the commissioners. Another and different view may be expressed logically we believe in that it must through the force of the sentence aforesaid, that such person must certainly contain the qualifications as is provided for in this section, or in other words, the preceding terms and conditions of the section cannot be ignored but must be followed, and if they are followed for one purpose we see no reason why they should not be followed for all purposes. If our conclusions in this particular are correct then a person appointed by the governor must also be approved by the Senate, as is provided for in the first sentence of the section, in addition to meeting the other qualifications as to age and residence, etc. We are mindful of an interpretation that at first blush may seem plausible in that the legislature by the placing of this sentence in the section intended to delegate exclusively to the governor the right to make appointments in case of vacancies without the advice and consent of the Senate but in view of the reasons which present themselves on the contrary view it is our view that this last contention is not tenable.

We call attention to the case of O'Malley v. Continental Life Ins. Co., 75 S. W. (2d) 837, l.c. 839, par. 4-5, wherein the Court said:

"The legislative intent in the enactment of the law is to be sought and effectuated. This is the rule

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of first importance in statutory interpretation. To ascertain such intent we invoke as aids such of the auxiliary rules of interpretation as may seem to bear with incidence as direct as may be upon the matter in hand. Briefly stated, these in substance recognize and require that the language of the act be considered (25 R.C.L. sec. 216, p. 961); that each word be accorded its ordinary meaning, generally speaking; and that in construing a word or expression of a statute susceptible of two or more meanings the court will adopt that interpretation most in accord with the manifest purpose of the statute as gathered from the context (Id., sec. 237, p. 994)."

We therefore must conclude that through the force of the last sentence of the section that as soon as a vacancy exists in said commission, that the governor has the authority to immediately appoint a person to fill said vacancy and in so doing he designates that such person shall fill out the unexpired term of the commissioner whose place the appointee is filling, and as soon as the legislature convenes, whether by general or special session, the governor shall present the appointee's name to the Senate for their confirmation.

Without dealing with that question with particularity in this opinion, we call attention to an opinion heretofore rendered by this office on November 10, 1942, to the Honorable Forrest C. Donnell, Governor of Missouri, Jefferson City, Mo., which opinion deals with the submission of numerous recess appointments in which opinion an appointment made under this section was at issue. It is our view that this opinion covers this latter question. Therefore, we attach the opinion instead of specifically detailing our views further in this opinion.

CONCLUSION

It is the opinion of this department that when a vacancy occurs in the Public Service Commission, that the Governor of Missouri has the authority and the duty to immediately appoint a commissioner for the unexpired term of the commissioner whose place has become vacant, and such new appointee must have all the qualifications as are set forth in section 5580, R. S. Mo. 1939.

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2) The governor must submit the name of the commissioner whom he has designated and appointed in the case of a vacancy for confirmation to the Senate at the next general assembly, whether such assembly be meeting in regular or special session.

Respectfully submitted,

B. Richards Creech
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney General

By VANE C. THURLO
Acting Attorney-General

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