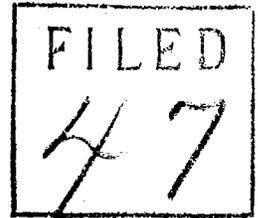


OFFICERS: Vacancy in office of county surveyor would
VACANCIES: be filled by appointment by the Governor.

February 7, 1946



2-14

Honorable O. A. Kamp
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Sir:

Receipt is acknowledged of your recent request for an opinion, reading as follows:

"I fail to find the definite provisions for filling of vacancy in Office of County Surveyor.

"Please advise me the method for filling the office of County Surveyor, in the event a vacancy occurs by resignation of the present County Surveyor.

"I conclude that it would be by appointment by the Governor, under the provisions that when vacancy occurs in any elective office, not provided for otherwise, the vacancy would be filled by appointment by the Governor. However, I would like to have an opinion from your office on this question."

Chapter 90, R. S. Mo. 1939, pertains to county surveyors and provides for their election, term of office, duties, etc. However, nowhere in this chapter is there provided the method of filling the office of county surveyor when a vacancy is created by resignation of the incumbent.

Section 4 of Article IV, Constitution of 1945, invests the Governor with the power to fill vacancies in public offices

unless otherwise provided by law, and is as follows:

"The governor shall fill all vacancies in public offices unless otherwise provided by law, and his appointees shall serve until their successors are duly elected or appointed and qualified."

Section 11509, R. S. Mo. 1939, pertains to filling vacancies in state and county offices by appointment by the Governor, and provides 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."

We note that the office of county surveyor is not included among the offices specifically named in the above section which are excepted from being filled by appointment by the Governor when a vacancy occurs. Consequently, the office of county

surveyor, being an elective county office, would be filled by appointment by the Governor in case a vacancy occurred.

Under Section 11509, supra, the person appointed to fill a vacancy occurring in the office of county surveyor would continue in such office until after the next ensuing general election, which might be before the remaining term of the county surveyor was to expire. The person elected at the next ensuing general election would then fill out the remaining term. If the next ensuing general election was the one to elect a county surveyor for the next ensuing regular term, then the person elected to such office would continue in office for the next regular term. The person appointed to fill the vacancy would hold the office until the date that the person elected at the next ensuing general election entered upon the discharge of his duties.

In State ex inf. Barrett ex rel. Shumard v. McClure, 253 S. W. 743, 299 Mo. 688, the principal question involved was whether the person appointed by the Governor to fill the office of county treasurer after a vacancy had occurred, due to the incumbent dying, could, under the appointment, hold the office for the remainder of the unexpired term. Another person was claiming the office as a result of a general election held before the term expired. At S. W. loc. cit. 744, the court stated that:

" * * * * Section 4786 provides for the appointment to fill a vacancy caused by whatsoever means in a county office to be filled 'until the first Monday in January next following the * * * 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.' The section then provides that, when the term begins on any other day than the first Monday in January, the appointee shall hold such office until such other date.

"The statute plainly states that the election may be for an unexpired term. The Governor would have no authority to make an appointment which would conflict with that provision of the statute. This question was settled by the court en banc

in case of State ex inf. v. Koeln, 270 Mo. 174, loc. cit. 190, 191, 192 S. W. 748, which involved the office of collector. A collector's office ran for four years under section 12875, R. S. 1919; the provision being in language very similar to section 9528, relating to the term of county treasurer. This court there held that at a general election the collector could be elected for an unexpired term; that there was no conflict between the statute regulating the length of the term and section 4786, R. S. 1919, providing for an election for the unexpired term. * * * *"

Conclusion.

Therefore, in view of the foregoing, it is the opinion of this department that a vacancy created in the office of county surveyor, by resignation of the incumbent, would be filled by appointment by the Governor, under the authority of Section 4, Article IV, Constitution of Missouri 1945, and Section 11509, R. S. Mo. 1939. The person appointed to fill such vacancy would continue in office until the person elected to fill such office at the next ensuing general election would enter upon the discharge of the duties of the office.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RFT:ml