

GENERAL ASSEMBLY:
LEGISLATOR:

Representative employed by Director of Revenue on a per diem and mileage basis vacates his office as Representative.

FILED

88

October 11, 1946

10-15

Honorable Cecil T. Taylor
County Representative
Shelbyville, Missouri

Dear Sir:

Reference is made to your letter of recent date, requesting an opinion of this department, and reading as follows:

"I would like to have your official opinion as to whether or not the Director of Revenue of Missouri can hire or employ a county representative in the General Assembly on a per diem and mileage basis to act as appraiser for the State of Missouri for the purpose of determining the amount of State inheritance tax due the State."

Article III, Section 12, of the Constitution provides as follows:

"No person holding any lucrative office or employment under the United States, this state or any municipality thereof shall hold the office of senator or representative. When any senator or representative accepts any office or employment under the United States, this state or any municipality thereof, his office shall thereby be vacated and he shall thereafter perform no duty and receive no salary as senator or representative. During the term for which he was elected no senator

or representative shall accept any appointive office or employment under this state which is created or the emoluments of which are increased during such term.
* * *

It is clear that anyone who is hired by the Director of Revenue of the state, and who receives pay or compensation from the State of Missouri, is either an officer or an employee of the state.

Article XIV, Section 13, of the Constitution of 1875 provided as follows:

"Any public officer or employee of this State or of any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment."

In the case of State ex inf. Norman v. Ellis, 28 S. W. (2d) 363, this provision was held to be self-enforcing. The Supreme Court of Missouri said, l. c. 365-366:

"The general rule is thus stated in 12 C. J. p. 729:

"It is within the power of those who adopt a constitution to make some of its provisions self-executing, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect. * * *

"Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed."

"And further, page 730:

"A constitutional provision designed to remove an existing mischief should never be construed as dependent for its efficiency and operation on the legislative will."

* * * * *

" * * * '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.' That language aptly applies to this case.

"Section 13 provides that any official violating its provision, * * * shall thereby forfeit his * * * office employment."

"He forfeits by the act forbidden, and therefore his act results in a status. See, also, State ex rel. v. Sheppard, 192 Mo. loc. cit. 511, 91 S. W. 477."

Since it is provided in Section 12 of Article III of the present Constitution that the office of a senator or representative who accepts any office or employment under this state shall thereby be vacated, and he shall thereafter perform no duty and receive no salary as senator or representative, the holding in the case of State ex inf. v. Ellis, cited above, is applicable. A status results when a senator or representative does accept any office or employment under this state, and the section must be held self-enforcing. The fact that the employment may be only occasional would not affect this status, as the office is vacated immediately upon the acceptance of an office or employment under this state.

CONCLUSION

It is the conclusion of this department that a representative who is employed by the Director of Revenue of

Honorable Cecil T. Taylor - 4

Missouri and paid on a per diem and mileage basis vacates his office immediately upon acceptance of such office or employment.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR