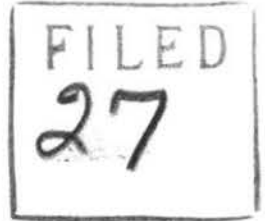


OFFICERS:
TOWNSHIP COLLECTOR:

Township collector by changing his residence to another township does not thereby forfeit his office and may collect taxes in the township in which he is elected until he is removed.

November 8, 1948

FILED 27



Mr. Clarence Evans, Chairman
State Tax Commission
Jefferson City, Missouri

Dear Mr. Evans:

We have yours of recent date in which you request an opinion from this department on the question of whether or not a township collector who has changed his residence from the township in which he is elected to another township in the county, may still collect taxes for the township in which he is elected.

Section 13953, R. S. Mo. 1939, provides as follows:

"No person shall be eligible to any township office unless he shall be a qualified voter and a resident of such township."

From this section it is apparent that a township collector must be a resident of the township.

Section 13962, R. S. Mo. 1939, provides for the township board to fill a vacancy which may occur in any office in the township.

The question here presented is, "Does the township collector forfeit his office and thereby become disqualified from collecting taxes by virtue of the fact that he has moved out of the township, or does he hold this office until he is removed by proper procedure?"

Under Section 12828, R. S. Mo. 1939, which is a general section on the removal of officers, it is provided as follows:

"Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty

to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner hereinafter provided."

It will be noted from this section that a change of residence of the officer is not grounds for removal under this section and that procedure for removal under this section is prescribed. In other words, even though the officer may forfeit his office under some of the grounds mentioned in this statute, a procedure for removal must be instituted.

In the case of State ex inf. McKittrick vs. Wilson, 166 S. W. (2d) 499, the court had before it the question of whether or not a clerk of the circuit court "forfeits" his office for failing to personally devote his time to the duties of the office. The court in laying down the rules as to whether or not the clerk would be entitled to a hearing or whether or not he automatically forfeited the office under the charges set out therein, said:

"Unless an office is abandoned or relinquished an officer is entitled to a trial on the charge of failing personally to devote his time to the performance of his duties. Such failure may be excusable. * * * Verily a public office is held on the implied condition that the officer will perform the duties belonging to it. However, Mechem in his work on Public Officers points out that generally it is a willful refusal to perform the duties of an office which works a forfeiture so that a judgment of ouster is necessary. * * *"

We also refer you to State ex inf. McKittrick vs. Wymore, 119 S. W. (2d) 941, (943), wherein the court approvingly quoted the following rule:

"Where a statute requires an officer to keep his office open for transaction of official business, during certain hours of a particular day, and provides that his failure so to do, unless caused by sickness, shall forfeit his office," a forfeiture on that ground can be enforced only by proceedings in the nature of a quo warranto and cannot be made part of the judgment, on conviction of a misdemeanor for neglecting the duties of his office. * * *"

Mr. Clarence Evans

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These authorities, we think, clearly demonstrate the rule in Missouri to be that even though an officer does not comply with the statute as to residence yet he would not forfeit the office by not so complying. However, by not complying with the "residence" requirements of the statute might be grounds for a proceeding for removal but until such proceeding is brought and determined the officer would be entitled to hold the office and perform the duties thereof.

CONCLUSION

From the foregoing, it is the opinion of this department that a township collector who removes from the township in which he is elected and holds office, as such officer, may collect the taxes in that township until he is removed by quo warranto proceedings or any other proceedings prescribed by statute.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:mw