

HEALTH: Deputy State Commissioner of Health appointed by the county court in a county of the third class shall be appointed for a term of one year and said term of office shall commence on the date of the appointment first made by the county court. A county of the third class can have only one deputy state commissioner of health at any given time.

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Mr. Robert G. Kirkland  
Prosecuting Attorney  
Clay County  
Liberty, Missouri

Dear Sir:

I.

We have received the following request for an official opinion from you, which reads as follows:

"In a county of the third class, must a Deputy State Commissioner of Health appointed by the County Court, under Sec. 9745, as amended in 1945, be appointed (for the first time) for a full year from the date of the appointment or for a full calendar year or for any less period of time? Under this section in a county of the third class, can there be only one Deputy State Commissioner of Health at any given time?"

Section 9745 as enacted by Laws of Missouri, 1945, at page 976, omits the time that the appointment of the deputy state commissioner of health shall be made by the county court as was the case in said Section 9745 before its repeal and reenactment by the Legislature in 1945. Section 9745 reads as follows:

"The county courts of the several counties of this state may appoint a duly licensed qualified physician as a deputy state commissioner of health for a term of one year, and in the event a vacancy is created in the office of deputy state commissioner of health, such court may appoint a duly licensed qualified physician for the unexpired term. If the county court of any county decides to appoint a deputy state commissioner of health as empowered in this law, it shall agree with said commissioner as to the compensation and expenses to be paid for such service, which amount shall be paid out of

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the county treasury of the county. Nothing contained herein shall be construed to require the county court of any county to appoint a deputy state commissioner of health in any county."

It will be observed that the statute prescribes only the length of the term of the office it creates; it no longer contains any provisions as to when the term shall commence or when it shall end. The Supreme Court in the case of State ex rel. Rosenthal v. Smiley, 304 Mo. 549, l.c. 558, has held: (263 S.W. 825)

"\* \* \*Under the rule of construction applicable to such a statute which has long obtained in this State it must be held that it was the legislative intent that the 'term' of the office should consist of consecutive periods of two years, following each other in regular order, the one commencing where the other ends, and that the initial term should commence on the date of the appointment first made by the county court. When the appointing power named the first incumbent it thereby as effectually fixed the dates of the beginning and termination of the initial term of the office, and of the subsequent terms as though they had been expressly prescribed by the Legislature. (State ex inf. v. Williams, 222 Mo. 268; State ex rel. v. Stonestreet, 99 Mo. 361.)

"When the duration of the term is fixed, and also the beginning or ending, or both, a vacancy, if it occurs, is in the term of office as distinct from being in the office itself, and an appointment to fill such vacancy can only be for the unexpired portion. This rule, which makes for uniformity and is in consonance with the general intent of our Constitution and legislative enactments has had the repeated sanction of this court.\* \* \*"

The Supreme Court held in State ex inf. v. Williams, 222 Mo. 268, in a case involving a controversy as to the beginning or ending of the term of office of a factory inspector that was to be appointed by the Governor of Missouri for a term of four years:

"When the General Assembly created the office of factory inspector, prescribing the length of the term, but failing to designate the commencement or ending of such term, and investing the Governor with the power of appointment to fill such office, that the

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Governor had the right to fix the commencement and ending of such term there certainly can be no dispute."

\* \* \* \* \*

"The statute is silent on the point as to the beginning of the first appointee's term, and the reason for this is most obvious, since, the power of appointment being lodged in the Executive, it belonged to him in fact, if not in law, to determine the time of the inception of the actual official term of such appointee; the duration of that term was already fixed by law. But if the Legislature being possessed of the power, had fixed the date of the commencement of the first appointee's official term, it would not be questioned that such initial point, being once made sure and steadfast, would recur at every corresponding period of two years. This must be true, or else the premises from which this conclusion is drawn sustained as it is by authority, that a "term of office uniformly designates a fixed and definite period of time," must be false. As the Legislature did not fix the date when the official term of the first appointee under the new law was to begin, this date was necessarily left to be fixed by the appointing power; but, when fixed, the determination thus reached must have been as effectual in all its incidents and consequences as if previously made by the Legislature. This also must be true, or else it must be true that the Executive was incapable of fixing such initial point, and that, therefore, it never was fixed, which is an impossible as well as an absurd, supposition.

"This reasoning leads to this result: That the date of the appointment first made by the Governor for the office in question, initiated the official term of the first appointee, and that all subsequent appointments necessarily had reference to such initial period, and, so far as lawful, conformed thereto. Attorney General ex rel. v. Love, 39 N.J.L. 476, is decisive of this point. And the general rule is elsewhere recognized that when no

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time is mentioned in the law, from which the term shall commence, it must begin to run from the date of the election. \* \* \*

Section 655, R. S. Mo. 1939, provides in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: \* \* \* \*third, the word 'month' shall mean a calendar month, and the word 'year' shall mean a calendar year, unless otherwise expressed, and the word 'year' be equivalent to the words 'year of our Lord;' \* \* \*

If we followed this statute strictly we would construe the term of one year in said Section 9745 to mean calendar year in order to conform with the rule stated in said Section 655, supra. But this rule is made subject to the qualification that such a construction is not to be given where it would be plainly repugnant to the intent of the Legislature or to the context of the statute in which the word is used. (City of St. Charles v. Union Electric Company of Missouri, 185 S.W.(2d) 295, l.c. 310.)

Since the county court must agree with the deputy commissioner of health as to the compensation and expenses to be paid for said services, according to the provisions of said Section 9745, supra, then it necessarily follows that the amount of the compensation that said deputy commissioner of health is to receive must be in the budget of the county for the year in which the deputy commissioner of health is to serve. The Supreme Court has held "that any payment ordered by the county court of a county of less than 50,000 inhabitants, where there was no balance budgeted with which to make payment, would be void under the provisions of Section 10917 applicable to such county.\* \* \*" (See Mo. Kan. Chemical Co. v. Christian County, 352 Mo. 1087, l.c. 1090)

If a vacancy occurs in the office of deputy state commissioner of health for your county during the year, Section 9745, supra, provides that the court may appoint a duly licensed qualified physician for the unexpired term. We could construe this to mean for the remainder of the year that had not expired. We trust that this answers the first question in your request.

The second question in your request is whether or not a county of the third class may have more than one deputy state commissioner of health at any given time. Said Section 9745, supra, uses the words "a deputy state commissioner of health," and also uses the

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words "the office of deputy state commissioner of health." Section 9746, R. S. Mo. 1939, as amended by Laws of Missouri, 1945, page 976, provides:

"In all counties of class one the county court of such county may appoint such deputies or assistants to or for the deputy state commissioner of health of such county, and when appointed, shall fix a reasonable compensation, including expenses of such deputies and assistant, all to be paid out of the county treasury."

This section applies to class one counties while Section 9745, supra, applies to the county courts of the several counties of this state. We believe that this indicates an intent on the part of the Legislature to restrict the appointment in all counties, except counties of class one, to one deputy state commissioner of health. We realize that Section 652, R. S. Mo. 1939, provides as follows:

"When any subject-matter, party or person is described or referred to by words importing the singular number or the masculine gender, several matters and persons, and females as well as males, and bodies corporate as well as individuals, shall be deemed to be included."

This section is subject to Section 653, R. S. Mo. 1939, which provides:

"The rules prescribed in the last two sections shall apply in all cases, unless it be otherwise specially provided, or unless there be something in the subject or context repugnant to such construction."

We believe that it would be repugnant to the intent of the Legislature to construe the word "a" to include more than one because there would be an overlapping of duties and responsibilities between two or more deputy state commissioners of health in the same county and a great deal of confusion if they promulgated different rules and regulations in regard to health matters.

We realize that the Supreme Court said, In re: Dean's Estate, 350 Mo. 494, l.c. 504, 166 S.W.(2d) 529:

"\* \* \*Furthermore, Sec. 652, R. S. 1939, Mo. R.S.A., sec. 652, provides that wherever any subject matter is referred to by words

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importing the singular number, several matters shall be deemed to be included. In other words, in statutes the singular may be taken as including the plural."

But we believe that words importing the singular number may not be extended and be applied to several persons or things except when it is necessary to carry out the evident intent of the statute and this was so held in the case of First National Bank v. State of Mo. 44 S.C. 213, 263 U.S. 640, 68 L.Ed. 486.

The Supreme Court of Missouri has held:

"The primary rule of construction of statutes is to ascertain the lawmakers' intent from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, \* \* \*" (Haynes v. Unemployment Compensation Commission, 353 Mo. 540, l.c. 546, 183 S.W.(2d) 77.)

We are convinced that the Legislature created the office of deputy state commissioner of health and that it is a public office with governmental functions, powers and duties. When the county court exercised its power of appointment the office came into existence as a fixed and established county office. There could only be one office of deputy state commissioner of health in the county. State v. Smiley, supra. State ex inf. Crain v. Moore, 339 Mo. 492, l.c. 500; State ex inf. Wallach v. Loesch, 350 Mo. 989, l.c. 997.

### III.

#### CONCLUSION

It is the opinion of this department that a deputy state commissioner of health appointed by the county court in a county of the third class shall be appointed for a term of one year and said term of office shall commence on the date of the appointment first made by the county court and in the event of a vacancy in the office then the court may appoint for the unexpired term, that is, the remainder of the year. The term of the office is not upon the calendar basis but for a period of 365 days from the date of the appointment. A county of the third class can

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have only one deputy state commissioner of health at any given time.

Respectfully submitted,



STEPHEN J. MILLETT  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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