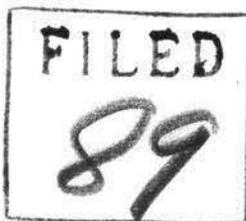


CIRCUIT JUDGE--Term of office on appointment to fill a vacancy under non-partisan court plan.

:A Circuit Judge appointed to fill a vacancy under the provisions of the non-partisan court plan provided in Art. V of the Constitution of this State will hold office for a term ending Dec. 31, following the next General Election after the said Circuit Judge has been in the office for a period of twelve months after his appointment.



May 15, 1952

5-15-52

Honorable Walter H. Toberman  
Secretary of State  
Jefferson City, Missouri

Dear Mr. Secretary:

This will be the opinion you requested from this office respecting the date of termination of the tenure of office of Honorable J. Casey Walsh, Judge of the Eighth Judicial Circuit of Missouri in the City of St. Louis, Missouri, under the terms of Section 29(c), Article V of the Constitution of this State, 1945. Your letter requesting the opinion reads:

"J. Casey Walsh was commissioned as Judge of the Eighth Circuit, St. Louis City on November 6, 1951.

"This question has been raised, 'In view of Section 29(c), Article 5 of the Constitution, does his term of office expire on December 31, 1952 or 1954?'

"We respectfully request your opinion in this matter."

We are advised by your office that Judge Walsh was appointed Judge of the Eighth Judicial Circuit in the City of St. Louis, Missouri, on November 6, 1951, by the Governor, under the non-partisan court plan provided in the Constitution of this State, to succeed Judge E. M. Ruddy, resigned.

Section 29(a) of Article V of our present Constitution providing procedure for the appointment by the

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Governor of a Circuit Judge, and other Judges in this State, when a vacancy occurs, under the non-partisan court plan, reads as follows:

"Whenever a vacancy shall occur in the office of judge of any of the following courts of this state, to wit: The supreme court, the courts of appeals, the circuit and probate courts within the city of St. Louis and Jackson County, and the St. Louis courts of criminal corrections, the governor shall fill such vacancies by appointing one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the governor by a nonpartisan judicial commission established and organized as hereinafter provided."

Your letter recites that the question of whether the term of office of Judge Walsh will end on December 31, 1952 or 1954 presents itself by reason of the provisions of Section 29(c) (1), Article V of the 1945 Constitution. That part of Section 29 (c) (1) applicable to the question and which we will construe under your request, reads as follows:

"Each judge appointed pursuant to the provisions of sections 29(a) - (g) shall hold office for a term ending December 31st following the next general election after the expiration of twelve months in the office. \* \* \* ."

The next General Election in this State after November 6, 1951, the date of the appointment of Judge Walsh as Circuit Judge in the City of St. Louis, Missouri, will be held on November 4, 1952. Judge Walsh will have been in the office of Judge of the Eighth Judicial Circuit in the City of St. Louis, Missouri, two days less than twelve months on November 4, 1952.

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The next General Election after the expiration of twelve months in the said office by Judge Walsh will be held in this State on November 2, 1954.

Section 1 of Article VIII, Constitution of Missouri, 1945, providing for the day and year of holding General Elections in this State reads as follows:

"The general election shall be held on the Tuesday next following the first Monday in November of each even year, unless a different day is fixed by law, two-thirds of all members of each house assenting."

Sub-section (3) of Section 1.020, RSMo 1949, construes "General Election" as follows:

"'General election' means the election required to be held on the Tuesday succeeding the first Monday of November, biennially;"

The General Assembly of this State has passed no Act fixing a day for holding General Elections different from the day fixed by the Constitution in said Section 1, Article VIII, supra.

Section 29(g), Article V of our present Constitution making all of the provisions of Sections 29(a) - (g) self-enforcing reads as follows:

"All of the provisions of sections 29 (a)-(g) shall be self-enforcing except those as to which action by the general assembly may be required."

That part of Section 29 (c) (1), supra, providing that a Judge, including a Circuit Judge, appointed pursuant to Sections 29 (a) - (g), shall hold the office for a term

Honorable Walter H. Toberman:

ending December 31st following the next General Election after the expiration of twelve months in office, is a complete, substantive and effective provision of our present Constitution, on this question, standing alone, without reference to any other part or provision of said Section 29(c). It is self-enforcing under the provisions of Section 29(g), supra, and does not require, nor does it have, any action by the General Assembly. That part of said Section 29 (c) (1) quoted, supra, is clear and conclusive, we believe, to determine, under the facts existing in this case, that the term of office of Judge Walsh as Judge of the Eighth Judicial Circuit in the City of St. Louis, Missouri, will expire on December 31, 1954, following the General Election on November 2, 1954.

CONCLUSION

It is, therefore, the opinion of this department that, under the provisions of Section 29 (c), Article V of the present Constitution of this State, the term of office of Judge J. Casey Walsh as Judge of the Eighth Judicial Circuit in the City of St. Louis, Missouri, will expire on December 31, 1954, since the General Election to be held on November 2, 1954 will be the next General Election held in the State after Judge Walsh has been in said office twelve months.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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