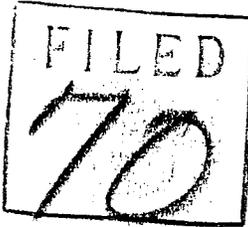


COUNTY HOSPITAL TRUSTEES: : Newly elected County Hospital Trustees
: should qualify and take over their of-
When inducted into office:: fices under the terms of Section
: 205.190, RSMo 1949, and should not
: wait until the first of January
: following, to take office.
.....



December 1, 1954

Honorable Elmer Peal
Prosecuting Attorney
Pemiscot County
Caruthersville, Missouri

Dear Mr. Peal:

We are here supplying the opinion which you have requested whether newly elected County Hospital Trustees are to assume office after the November election or on January 1st following the election. Your letter requesting an opinion on this subject reads as follows:

"I will appreciate your advice as to when newly elected County Hospital Trustees are to take office. I am not sure if it is after the November election or January 1st.

"I wish to thank you for your advice, I am,"

Section 205.160, RSMo 1949, provides for the establishment and maintenance of public county hospitals in the several counties of this State. Said section reads as follows:

"The county courts of the several counties of this state are hereby authorized, as provided in sections 205.160 to 205.340, to establish, construct, equip, improve, extend, repair and maintain public hospitals, and may issue bonds therefor as authorized by the general law governing the incurring of indebtedness by counties."

Section 205.170, RSMo 1949, provides for the creation by the County Court of a Board of Trustees for a hospital

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in any county of this State having established a public county hospital as a unit of the County Health and Welfare Programs, initially, by the appointment of such Trustees, five in number, who shall hold their offices until the next following general election. Thereafter, the statute states, each Trustee shall be elected for terms of different duration, and thereafter such Trustees shall be elected at each subsequent general election to each serve a term of four years. Said Section 205.170, defining the grounds of eligibility of citizens of the county for appointment, and election to office, as members of the Board of Trustees for such hospital, and providing for their election and the respective tenures of office of such Trustees, and barring the Trustees from having any interest, directly or indirectly, in the purchase of supplies for such hospital, unless purchased by competitive bidding, reads as follows:

"1. The county court shall appoint five trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, not more than three of said trustees to be residents of the city, town or village in which said hospital is to be located, who shall constitute a board of trustees for said public hospital.

"2. The said trustees shall hold their offices until the next following general election, when five hospital trustees shall be elected and hold their offices, three for two years and two for four years, and who shall by lot determine their respective terms.

"3. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the election of hospital trustees who shall each serve for a term of four years.

"4. Any vacancy in the board of trustees occasioned by removal, resignation or otherwise shall be reported to the county court

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and be filled in like manner as original appointments, the appointee to hold office until the next following general election, when such vacancy shall be filled by election of a trustee to serve during the remainder of the term of his predecessor.

"5. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for said hospital, unless the same are purchased by competitive bidding."

The period of time for which an officer may hold an office to which he has been elected or appointed, has been the subject of consideration by the provisions of our Constitution, the textwriters, the Legislature of Missouri and the Appellate Courts of this State. 46 C.J. 963, 964, defines "term of office" as follows:

"The phrase 'term of office' is one generally used to mean the fixed period of time for which the office may be held, although it is also used to designate the period for which the office is actually held."

The term of occupancy by officers of all public offices is prescribed by the present Constitution of this State. Section 12 of Article VII of the 1945 Constitution of Missouri, on the point, reads as follows:

"Tenure of Office.--Except as provided in this Constitution, and subject to the right of resignation, all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified."

Section 105.010, RSMo 1949, prescribing the terms of office of officers in this State reads as follows:

"All officers elected or appointed by the authority of the laws of this state shall hold their offices until their successors are elected or appointed, commissioned and qualified."

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Both the constitutional and statutory provisions specifying the period of tenure of office of officers in this State, here quoted, have been construed by our Supreme Court to authorize an officer to hold over until his successor is elected or appointed and qualifies. In the case of Langston vs. Howell County, 79 S.W.(2d) 99, the Supreme Court, on this question, l.c. 102, said:

"Our Constitution (section 5, art. 14) provides that: 'In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified,' and section 11196 R.S. 1929 (section 9168, R.S. 1919), Mo. St. Ann. § 11196, p. 6141, reads: 'All officers elected or appointed by the authority of the laws of this state shall hold their offices until their successors are elected or appointed, commissioned and qualified.' We find no constitutional or statutory provision which either expressly or by implication excludes the county highway engineer, or the office of county highway engineer, from the operation and effect of the foregoing constitutional and statutory rule so that since there is no 'contrary provision' the rule so prescribed must be applied. It is said in 46 C.J. p. 968: 'The general trend of decisions in this country is that, in the absence of an express or implied constitutional or statutory provision to the contrary an officer is entitled to hold his office until his successor is appointed or chosen and has qualified.' Langston's official term was fixed at one year, but upon the expiration thereof, no successor having been appointed, his right to hold such office, and his title thereto, continued until the right of a duly appointed and qualified successor attached. His right to hold over and his continuance in the office was of course contingent and defeasible subject to be terminated at any time by the appointment

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and qualification of his successor. During the time an officer so holds over, under the provisions of the constitutional and statutory provisions, supra, he holds the office as a de jure officer (46 C.J. p. 969) and by the same tenure, after the prescribed term, until the right of his duly chosen and qualified successor attaches. It therefore appears that the trial court was in error as to the applicable rule of law, and in holding that Langston was not entitled to hold over and continue in office after the expiration of the term prescribed by the order of appointment."

We have observed from the terms of Section 205.170, supra, that, after the terms of the first elected Trustees have expired, by the provisions of Subsection 3 of said Section 205.170, supra, at each subsequent general election the offices of the Trustees whose terms are about to expire shall be filled by the election of Hospital Trustees who shall each serve for a term of four years. The effect of these provisions immediately and permanently is to demonstrate that the intention of the Legislature was, as the same is expressed in said Sections 205.170 and 205.180, that there shall exist no vacancy in the offices of Trustees of a county hospital, and that the term of office of each Trustee so elected at each subsequent general election shall be for four years. Section 205.180 provides that each candidate for the office of Hospital Trustee shall file with the County Clerk of the county, at least thirty days before the General Election, an announcement, in writing, of candidacy, but in the event there is not a sufficient number of announcements of Trustees filed, the County Court shall appoint such Trustees as may be necessary to fill all vacancies of the Board which result from the expiration of the term of any Trustee, or Trustees, and any such appointee shall serve until the next general election when a Trustee shall be elected to fill the remainder of the unexpired term. Said Subsection 3 definitely fixes the term and period of time to be served by such Trustee, elected at each subsequent general election, at four years. No theory on construction of said provision may change the effect of that provision.

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It means that the term of office of each Trustee shall expire on the last day of the 4 year period from and after the day when such Trustee was elected at such general election. The intention and purpose of the Legislature in so fixing the definite period of four years that each Trustee should serve from and after the date of his or her election so that newly elected Trustees may take office is further shown by the provisions of Section 205.190, RSMo 1949. Subsection 1 of that section provides that the Trustees shall, within ten days after their appointment or election, qualify by taking the oath of civil officers and organize as a Board of Hospital Trustees by the election of one of their number as chairman, one as secretary and by the election of such other officers as they may deem necessary.

The period of four years as the definite period of the term of office of such Trustees, as such, and as fixed by the statutes, is subject to no qualification whatever. But the actual tenure period such officer may hold the office is subject to the provisions of said Subsection 1 of Section 205.190 by which it is provided that his successor shall qualify within ten days after his election or appointment. This principle of the authority of all public officers to hold offices to which they have been appointed or elected until their successors have been duly elected or appointed and qualified has been discussed and authorities cited hereinabove as the law of this State in support of the principle, is applicable here. Manifestly, the period of time of the tenure of office of each Hospital Trustee is, and of necessity must be, continued after the full four year period has expired until his or her successor has been qualified by taking the oath of office required by the statute.

We believe it is clear from the provisions of the several sections noted, and upon which comment has been made and from which quotes are herein set forth, that each newly elected Trustee of a County Hospital shall qualify for and assume the duties of such Trustee

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immediately, upon his or her election, and as soon thereafter as circumstances will permit, as is provided in Subsection 1 of said Section 205.190, and not on January 1st, following, as a fixed date to take office.

CONCLUSION

It is, therefore, the opinion of this office, considering the premises, that newly elected County Hospital Trustees shall take office immediately following the general election at which they are elected, and as soon thereafter as such Trustees may qualify under the terms of Section 205.190, RSMo 1949. Such Trustees should not delay taking over such offices until January 1st following.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. George W. Crowley.

Very truly yours,

JOHN M. DALTON
Attorney General

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