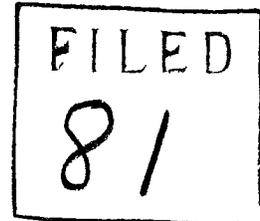


COUNTY ASSESSORS: County assessor elected at 1952 general election served until death in December 1953.
VACANCIES: Governor subsequently appointed one to fill vacancy under authority of Sections 53.010 and 105.030, RSMo 1949, and appointee could not serve full unexpired term of deceased. Successor must be elected for unexpired term at general election in 1954, but such term will not begin until September 1, 1955.

April 7, 1954



Honorable W. D. Settle
Prosecuting Attorney
Howard County
Fayette, Missouri

Dear Sir:

This department is in receipt of your recent request for legal opinion, which reads as follows:

"I respectfully request an official opinion on the following proposition:

"In December, 1953, the assessor of Howard County, who was elected in 1952, died and the Governor issued a Commission to a successor to serve until 'his successor is duly elected or appointed and qualified.' The question arises whether this appointment is good for the full unexpired term of the deceased or must the office be filled in the 1954 election. If the latter is true, will the person elected serve a full term of four years or only the unexpired term.

"The County Clerk requests that you render this opinion as soon as possible so that he will know whether to accept Declaration of Candidacy before the deadline of April 27."

Chapter 53, RSMo 1949, is entitled "County Assessors," and contains all the general statutory provisions in regard to the election, term, duties, and other miscellaneous matters pertaining to the office of county assessor. However, no section of

Honorable W. D. Settle

this chapter prescribes the procedure that shall be followed in filling vacancies caused by the death, resignation or removal of the incumbent of this office. Section 53.010, RSMo 1949, specifically provides for the election of an assessor in each county of the state, his term of office, and when he shall enter upon the discharge of his duties. Said section reads as follows:

"At the general election in the year 1948 and every four years thereafter the qualified voters in each county in this state, except those under township organization, shall elect a county assessor. Such county assessors shall enter upon the discharge of their duties on the first day of September next after their election, and shall hold office for a term of four years, and until their successors are elected and qualified, unless sooner removed from office; provided, that this section shall not apply to the city of St. Louis."

Section 4 of Article IV of the Constitution of Missouri, 1945, empowers the Governor to fill all vacancies in public office unless otherwise provided by law, and reads as follows:

"The governor shall fill all vacancies in public offices unless otherwise provided by law, and his appointees shall serve until their successors are duly elected or appointed and qualified."

Section 105.030, RSMo 1949, provides that when any vacancies shall occur or exist in any state or county offices originally filled by election by the people, except those specifically named, that all such vacancies shall be filled by appointment of the Governor. We note that the office of assessor is not among those excepted from the operation of this section. Therefore, in our opinion, the Governor is authorized to appoint one to fill a vacancy in the office of county assessor. Said section reads as follows:

"Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any state or county office

Honorable W. D. Settle

originally filled by election by the people, other than the office of lieutenant governor, state senator, representative, sheriff, or coroner, such vacancy shall be filled by appointment by the governor; and the person so appointed shall, after having duly qualified and entered upon the discharge of his duties under such appointment, continue in such office until the first Monday in January next following the first ensuing general election - at which said general election a person shall be elected to fill the unexpired portion of such term, or for the ensuing regular term, as the case may be, and shall enter upon the discharge of the duties of such office the first Monday in January next following said election; provided, however, that when the term to be filled begins or shall begin on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold such office until such other date." (Emphasis ours.)

In the case of State ex rel. Bothwell v. Green, 352 Mo. 801, the facts involved were similar to those given in the opinion request. In that case the collector of Pettis County had been re-elected at the general election in 1942 for a four-year term commencing March 1, 1943, but died on December 25, 1942. A vacancy was thereby created, which was filled by appointment of the Governor under authority of Section 11509, R. S. Mo. 1939 (now Sec. 105.030, RSMo 1949). The court held that the appointee was not entitled to hold office for the entire term of four years but only until a successor was elected at the next general election in 1944 and had qualified, and also that the successor would hold office only for the unexpired term. It was also held by the court that said appointee could not hold the office beyond the date when the term of the newly elected collector should begin. At l.c. 805-808, the court said:

"The question for decision is whether Hazel Palmer, after serving the unexpired term, holds over for the full regular term of four years from March 1, 1943; or whether the office is open for election for the remainder of the regular term at the general

Honorable W. D. Settle

election to be held in November of this year.

* * * * *

"There is a general statute on the filling of vacancies, Section 11509, R.S. 1939, which provides: * * *

"We must read in conjunction with the statute on collectors the general statute on filling vacancies. This was the ruling in State ex inf. Barker v. Koeln, 270 Mo. 174, 192 S.W. 748 in which we held it was proper to elect in an off year for the unexpired term of the office of collector a successor to one who was appointed to fill a vacancy. It was also held in State ex inf. Major v. Amick, 247 Mo. 271, 152 S. W. 591, supra, that the general statute on filling vacancies is to be considered together with the statutes relating to the offices to which it applies. See also State ex inf. Hadley v. Herring, 208 Mo. 708, 106 S.W. 984. Clearly in this case the office became vacant upon the incumbent's death and Section 11509 furnished the authority to fill the vacancy and the conditions on which it was to be filled.

"Applying the provisions of Section 11509 to this case we find: a vacancy occurred upon the death of Greer; the vacancy was filled by the appointment of Hazel Palmer; her term under the appointment expires at the day designated for the beginning of the term, that is March 1, after the first ensuing general election, namely the general election to be held in November, 1944; and her successor should be elected to serve the remainder of the term at the general election in November, 1944.

* * * * *

"The legislative policy for filling vacancies has been described by the learned Judge

Honorable W. D. Settle

White in State ex inf. Barrett v. McClure, 299 Mo. 688, 253 S.W. 743. That case construed Section 11509 and held it plainly provided an election may be had for an unexpired term and the governor would have no authority to make an appointment which would conflict with such provision. Judge White then stated: 'Originally special elections were provided for to fill vacancies, so as to cut short the tenure of appointees. Apparently the expense and trouble of having special elections to fill vacancies caused the legislature in 1879 to provide for vacancies to be filled by appointment until the next succeeding general election. This shows that the legislative policy of the state has been to fill a vacancy for an elective office by election as soon as practicable after the vacancy occurs.'"

From the facts given in the instant case an assessor was elected at the general election held in Howard County in November, 1952, for a term of four years. After qualifying and serving only a few months the newly elected official died in December 1953. Thereafter, the Governor appointed a person to fill the vacancy in this office, and we assume that the appointee is still serving in that capacity.

The question presented in the opinion request is whether the person appointed by the Governor shall continue in office for the full unexpired term of the deceased or whether a successor to such deceased official must be chosen in the 1954 general election, and in the event the latter is true, will the person elected serve for a term of four years or only for the unexpired term.

It will be recalled that Section 105.030, supra, provides that an appointee of the Governor to fill a vacancy in office shall, after having qualified and has entered upon the discharge of his duties, continue in office until the first Monday in January next following the ensuing general election, at which election a person shall be elected to fill the unexpired portion of such term, or regular term as the case may be, and that such person shall enter upon the discharge of the duties of such office the first Monday in January next following said election

Honorable W. D. Settle

unless the term to be filled begins on some day other than the first Monday in January. In the latter event the appointee shall be entitled to hold the office until such other date.

Again, from the facts of the opinion request it is noted that the assessor of Howard County was elected at the general election in 1952. From the provisions of Section 53.010, supra, such assessor's term was for four years but did not begin until September 1, 1953, and would expire on the last day of August, 1957. However, the assessor died in December, 1953, thereby creating a vacancy in such office.

In view of the provisions of Sections 53.010 and 105.030, supra, particularly the underscored portion of the latter section, it is our thought that the person appointed by the Governor to serve as assessor of Howard County will not serve for the full unexpired term of the deceased. An assessor shall be elected at the general election in 1954 to fill the vacancy and the person who is elected will serve for the remainder of the unexpired term. However, the unexpired term will not begin until the first day of September, 1955. The appointee of the Governor now serving in that office shall continue until the first day of September, 1955.

CONCLUSION

It is the opinion of this department that when one elected county assessor at the general election of 1952, served until his death in December 1953, and the vacancy thus created was subsequently filled by appointment of the governor, under authority of Section 53.010 and 105.030, RSMo 1949, that said appointee could not serve for the full unexpired term of the deceased. A successor to the deceased must be elected for the unexpired term at the general election of 1954. Said appointee shall continue to serve in said office until the beginning date of such unexpired term on September 1, 1955.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

PNC/sm/vtl