

COUNTY TREASURER:
TOWNSHIP ORGANIZATION:
COUNTIES:
ELECTIONS:



The term of the treasurer of Daviess county will expire on December 31, 1954; that the office may be filled by appointment by the governor at any subsequent time; that the treasurer, whose term expired on December 31, 1954, may hold over in this office until her successor is duly elected or appointed and qualified; that she should not have been a candidate for reelection in 1952 nor in 1954. Further, that she may serve until April 1, 1957, unless her office is filled by appointment by the Governor.

February 18, 1954

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

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"Enclosed is a letter from Mrs. Ethel E. Manring, Treasurer of Daviess County, received in this office today.

"Her question is self evident in this letter. However, we would like clarified through an opinion, memorandum or other appropriate method these three questions:

"1.- Under section 54.030, Revised Statutes of Missouri 1949, should Mrs. Manring have been a candidate for re-election in 1952?

"2.- If not, does she run for re-election in 1954?

"3.- If neither is the case, does she serve until April 1, 1957 before relinquishing the office or beginning a new term?

"Although it is not stated in her letter, Mrs. Manring was elected in 1950."

The letter of Mrs. Manring, to which you refer and which you enclose, is noted.

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On January 5, 1951, this department rendered an official opinion to Honorable C. Bradley Brandom, Prosecuting Attorney of Daviess County, in which opinion we defined the status of the treasurer-elect, who was of course Mrs. Manring. A copy of that opinion is enclosed. In it we held, page 5, paragraph 6, that: "The treasurer elect will assume the duties of his office on the first day of January, 1951, and shall hold this office for a term of four years."

This opinion, as you will note, held that the treasurer-elect would take office January 1, 1951, and would hold office for a term of four years, which would end the term on December 31, 1954.

The question with which we are now confronted is whether the office of county treasurer in your county will become vacant on December 31, 1954. In this regard we direct attention to Section 54.030 RSMo. 1949, which reads:

"In counties of classes three and four the qualified electors shall elect a county treasurer at the general election in the year 1950, and every four years thereafter, except that in those counties having adopted the township alternative form of county government the qualified electors shall elect a county treasurer at the November election in 1948, and every four years thereafter. The county treasurer so elected shall be commissioned by the county court of his county, shall enter upon the discharge of the duties of his office on the first day of January following his election, and shall hold his office for a term of four years and until his successor is elected and qualified unless sooner removed from office. In counties which have adopted the township alternative form of county government the treasurer's term shall extend until the first day of April next after the election of his successor."

It will be noted that the above section holds that in regular organization counties of classes three and four, the county treasurer is to be elected at the January election in 1950, and every four years thereafter. This would put the election of a county treasurer in such counties in the years 1950, 1954, 1958, etc. However, the above section holds that in those counties which have adopted the township alternative form of government, the county treasurer shall be elected at the November election in 1948, and every four years thereafter, which would put such elections in 1948, 1952, 1956, etc.

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We have held in the above opinion that a county treasurer elected in 1950, in a county which was at that time not under township organization, would hold for four years even though the county changed over to township organization, which your county did on the last Tuesday in March, 1951, according to the provisions of Section 65.030 RSMo. 1949. The situation thus created is that there will not be any election for treasurer in your county in November, 1954, because Daviess County will at that time be, as you are now, and as it has been since the last Tuesday in March, 1951, a township organization county; and that the regular four year term of its treasurer will expire on December 31, 1954. In this situation, as we stated above, the question presented is whether, on December 31, 1954, this office will become vacant. If so, then can it be filled by appointment by the governor, since Section 4 of Article IV of the Constitution of Missouri states that 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.

In this respect we now direct attention to Section 12 of Article VII of the Constitution of Missouri, which reads:

"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, 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."

Section 105.030, RSMo. 1949, reads:

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

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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."

The above section 12 of Article VII of the Constitution has been construed in the case of Langstron v. Howell County, 79 S.W. (2d) 99. At l.c. 102 of that opinion, the court states:

"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. section 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 constitution 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.' * * *."

In the case of State v. Clark, 87 Conn. 537, the court held that under the constitutional provision that judges of the city and police courts may be appointed for terms of two years, there "was a vacancy" in the office of police judge of the city on the expiration of the two-year term for which he was appointed, though he was held over until his successor was appointed by the Legislature.

In the case of State v. Young, 68 So. 241, the Supreme Court of Louisiana held that the word "vacancy" in its literal and precise

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sense means a place that is empty or unoccupied, but, as applied to the expiration of a term of office, it is ordinarily given a more liberal and figurative meaning, conforming to the intention of the law maker and the purpose to be accomplished. According to the latter meaning, the expiration of the term of office creates a vacancy, though the incumbent is willing to continue performing the duties of the office.

In the case of Walsh v. People, 211 Pac. 646, the Supreme Court of Colorado held that where the constitution provided that every officer should exercise the duties of his office until his successor was duly qualified, does not give the incumbent a hold-over term until the qualification of his successor, and that, therefore, a vacancy exists on the expiration of his term within the meaning of the constitution, which authorizes the governor, in case of a vacancy, to appoint a person to discharge the duties of the office. Numerous other cases of like holdings could be cited, but we do not feel that there is any point in so doing.

In view of the above, it would appear that this office will become vacant on December 31, 1954, and that the governor may fill it by appointment at any time subsequent; that the incumbent may hold over until such appointment is made and the appointee is qualified admits of no doubt.

In making the above holding, we are not unaware that Section 54.030 RSMo. 1949, quoted by us above, states that a county treasurer shall "hold his office for a term of four years, and until his successor is elected and qualified.* * *" (Underscoring ours).

It will be noted that the above uses the word "elected" only, and does not use the word "appointed". Under this statute, therefore, the incumbent would hold over until her successor was elected and qualified, which election, as we stated above, would be in 1956, since Daviess has become a township organization county. However, it seems to us that this portion of Section 54.030, supra, constitutes an attempted restriction upon Section 12 of Article VII of the Missouri Constitution in that it attempts to restrict the filling of the office after the expiration of its regular term to election, whereas Section 12 of Article VII, supra, states that it may be filled by election or appointment. It is, of course, elementary that the statute cannot so restrict a provision of the Constitution.

CONCLUSION

It is the opinion of this department that the term of the treasurer of Daviess county will expire on December 31, 1954; that the office may be filled by appointment by the governor at any subsequent time; that the treasurer, whose term will expire on December 31, 1954, may hold over in this office until her successor is duly elected or appointed and qualified; that she should not have been a candidate for reelection in 1952 nor in 1954.

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It is our further opinion that she may serve until April 1, 1957, unless her office is filled by appointment by the governor.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamsen.

Very truly yours,

John M. Dalton
Attorney General

Enclosure
HPW/ld/vtl