

CORONER:
PUBLIC ADMINISTRATORS:
SUCCESSOR:
GOVERNOR:
TERM:
CITY OF ST. LOUIS:

St. Louis becomes vacant it is the duty of the Governor to appoint a successor who shall serve until the end of the four year term to which the one vacating the office was elected.

As the office of public administrator of the City of St. Louis is vacant it is the duty of the Governor to appoint a successor who shall serve until the first day in January, 1963, at which time the person having been elected at the November, 1962, general election shall take office and serve for the remainder of the unexpired term; i.e., until the first day in January, 1965.

December 28, 1961

Honorable James E. Crowe, Chairman
Board of Election Commissioners
208 South Twelfth Boulevard
St. Louis 2, Missouri

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Dear Mr. Crowe:

This opinion is rendered in response to your request dated September 15, 1961, as follows:

"The office of Coroner of the City of St. Louis was vacated by the death of Patrick Taylor who was elected Coroner at the general election in November of 1960. Subsequently the Governor of Missouri appointed a successor to this office. It is necessary for us to determine whether this appointment is until the next general election or for the full four year term for which Coroner Taylor was elected."

Further, by telephone, you have asked the additional question as to the office of Public Administrator, namely, should it be voted upon in 1962 or 1964 in light of the recent death of the Public Administrator in St. Louis.

With respect to the office of Coroner, we make the following observations.

Three statutory provisions (Section 58.020, Section 58.040 and Section 105.030, RSMo 1959) bear directly upon this problem.

Section 58.040 deals specifically and directly with the appointment of a coroner to fill a vacancy created by any means and provides that it shall be the duty of the Governor

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to fill such vacancy by appointment of some eligible person who shall discharge the duties of the office of coroner for the remainder of the term for which he is appointed.

The meaning of the phrase "for the remainder of the term for which he is appointed" is set out in Section 58.020:

"At the general election in the year 1948, and every four years thereafter, the qualified electors of the county at large in each county in this state shall elect a coroner who shall be commissioned by the governor, and who shall hold his office for a term of four years and until his successor is duly elected or appointed and qualified. Each coroner shall enter upon the duties of his office on the first day of January next after his election."

By the section above quoted it is clear that the intent of the legislature was to establish the term of coroner to run on the basis of four year periods which would not vary. Nowhere else in the statutes is there a law specifically providing for the election of a coroner at any other time.

The meaning of these two sections is clear and unequivocal and would be deemed to control absolutely except for the provisions of Section 105.030. Without setting forth that section here in full, I will state that it provides generally for the appointment of successors to elected state or county offices, who have vacated their offices for any reason, by appointment of the Governor to serve until the first Monday in January next following the first general election ensuing the appointment. Within that section there is a clause specifically exempting its application to the office of Lieutenant Governor, State Senator or Representative, or Sheriff.

Prior to 1955 the exempting clause also contained the word "coroner". Had not the word "coroner" been stricken from the exempting clause by the 68th General Assembly there would be no difficulty in interpreting the present state of the law. However, since they did see fit to remove the word "coroner", it might appear that a conflict exists in the present law.

We must resolve that conflict by reference to the principles of statutory construction. The principle that here applies was reiterated in State vs. Mouser, 284 S.W.2d 473, 1.c. 475:

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"Insofar as we have discovered there are only two statutes under which a successor to a circuit clerk elected by the people, as was respondent, can be elected prior to the end of a full term. These are (1) a general statute, § 105.030, applying to all state and county officers (with certain non-pertinent exceptions), and (2) said § 483.020, referring especially to clerks of courts of record and under which, as stated, the Governor purported to act. The latter section, being special, would govern over the general statute."

Though that case did not deal with an interpretation of the law as it pertains to coroners, it did deal with the construction of Section 105.030, stating that it is a general statute and that some other special statute would prevail over it.

Here we have another special statute and we must presume that the Supreme Court would again rule that such a special statute would prevail over Section 105.030. Further, it will not avail to argue that the legislature by virtue of deleting the word "coroner" from the exempting clause in Section 105.030 then intended specifically to bring coroners within the purview of the said section because they did not specifically repeal Section 58.020 and Section 58.040.

In addition, we may look to the purpose for which Section 105.030 was revised. That purpose is expressed by the revisor of statutes in a note contained in the printed version of Senate Bill 71 (§ 105.030), introduced January 5, 1955, which reads:

"word 'coroner' * is here deleted since Section 58.040 provides that the Governor shall appoint the coroner in case of vacancy."

Obviously the legislature deleted the word "coroner" because it had in mind the fact that there was another statute providing for the appointment of a coroner's successor by the Governor. What they did not have in mind and hence did not take into consideration was the period of time in which the successor was to serve, but that too is taken care of specially in Section 58.020. Therefore, by virtue of the rules of

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statutory construction Section 105.030 does not apply to the appointment of a person to fill a vacancy in the office of coroner.

Now, with respect to the office of public administrator, we make the following observations.

Authority for the election of public administrator is to be found at 473.730. No special provision is made under that law for the tenure of a person appointed to fill a vacancy in the office of public administrator, but it does provide that the term commences on January 1st following the election.

Therefore, the general law pertaining to the appointment of successors to public officers vacating their offices would apply. That is Section 105.030, which provides in essence that it is the duty of the Governor to fill such a vacancy by appointment, that the person so appointed shall serve until the first Monday in January next following the first ensuing general election, unless the term commences on some other date in which case such other date shall control, at which general election a person shall be elected to fill the unexpired portion of the term or for the ensuing regular term if the office would have been up for election at that time anyway.

CONCLUSION

When the office of coroner of the City of St. Louis becomes vacant it is the duty of the Governor to appoint a successor who shall serve until the end of the four year term to which the one vacating the office was elected.

As the office of public administrator of the City of St. Louis is vacant it is the duty of the Governor to appoint a successor who shall serve until the first day in January, 1963, at which time the person having been elected at the November, 1962, general election shall take office and serve for the remainder of the unexpired term; i.e., until the first day in January, 1965.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Howard L. McFadden.

Yours very truly,

THOMAS F. EAGLETON
Attorney General