

COUNTY OFFICERS: Person cannot qualify for office of county  
COUNTY CORONERS: coroner by becoming a citizen one month after  
QUALIFICATION: the beginning of the term.  
CITIZENSHIP:

April 25, 1961



Honorable Lon J. Levvis  
Prosecuting Attorney  
Audrain County  
Mexico, Missouri

Dear Sir:

This is in answer to your opinion request of February 21, 1961, which reads as follows:

"In the 1960 primary election in Audrain County no one was nominated, on any ticket, for coroner. No one was otherwise nominated thereafter as the candidate for coroner on any ticket, so that in the 1960 general election write-in votes, only, were cast for the office of coroner. Doctor Gordon Shaw received the largest number of such votes.

"Doctor Shaw was not a citizen of the United States at the time of that election and he did not become a citizen until in the early part of this month.

"Our County Clerk wrote to the Missouri Secretary of State about this situation, that is, whether or not the Clerk may legally and properly administer the oath of office to Doctor Shaw and issue a commission to him as coroner. The Secretary of State advised the Clerk to seek your opinion on the question. I am respectfully requesting such opinion by you in behalf of our Clerk."

In answering your question, we first turn to the constitutional and statutory provisions relative to the office of coroner.

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Section 8 of Article VII of the Constitution of Missouri provides as follows:

"No person shall be elected or appointed to any civil or military office in this state who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment, except that the residence in this state shall not be necessary in cases of appointment to administrative positions requiring technical or specialized skill or knowledge."

Section 58.030, RSMo 1949, gives the qualifications for coroners, and reads as follows:

"No person shall be elected or appointed to the office of coroner unless he be a citizen of the United States, over the age of twenty-one years, and shall have resided within the state one whole year, and within the county for which he is elected, six months next preceding the election."

The general question involved in your opinion request is the time as of which the eligibility to the office is to be determined. There is an annotation on this question in 88 ALR 812 which gives an analysis of the problems involved, and we quote from that annotation, pages 812, 813 and 814, as follows:

"On the question as of what time eligibility to public office must be determined, there is great conflict among the courts. Part of this conflict is doubtless due to the varying terminology used in constitutions and statutes of the various states, prescribing the eligibility and qualifications of public officers. But there is considerable disagreement among the courts even when the constitutional and statutory provisions in the respective jurisdiction are substantially identical. Also, the nature of the requisite qualifications has had some bearing

on the ultimate question as to the time as of which they must be determined.

"Where the Constitution or the statute, in terms or by necessary implication, specifies the time when the conditions of eligibility must be present, as where it is required that (a) the qualifications for public office shall exist at the time of the election, there can be no question that the candidate must be eligible at that time, and conditions not present at the time of election, but existing before or coming into existence after such time, which, if existing at the time of election, would have rendered him eligible, can have no such effect. See cases treated under subds. II, b, and VII.

(b) On the other hand, if the Constitution or the statute, in terms or by necessary implication, requires such conditions to exist at the time of the commencement of the term of office, or the time of the induction of the candidate into office and assumption by him of its duties, as distinguished from the time of the election, it is clear that existence of conditions of eligibility at the commencement of the term or induction of the candidate into office is sufficient to qualify him for the office, irrespective of their existence at the time of the election. See cases treated under subd. III, b.

"Where, however, the Constitution or the statute specifies no time for the existence of conditions of eligibility, and such time must be determined by construction of the terms employed, the courts are at wide variance as to the time as of which such conditions must or may exist in order to satisfy the constitutional or statutory requirements.

(a) One group of courts takes the view that the word 'eligible,' as used in Constitution or statute relating to qualification of public officers, has reference to the time of election, and means capacity 'to be elected,'

as distinguished from capacity 'to hold office,' and that therefore a candidate for a public office must be qualified at the time of election, with the result that if not then qualified he may not hold the office although, between the time of his election and the commencement of the term of his office, he has fulfilled all the conditions which, if existing at the time of the election, would have entitled him to hold it.

[Citing cases]

(b) Another group of courts, constituting the majority, takes the view that the word 'eligible' as used in constitutions and such statutes has reference to the capacity not of being elected to office, but of holding office, and that therefore, if qualified at the time of commencement of the term and induction into office, disqualification of the candidate at the time of election is immaterial.

[Citing cases]

(c) Where the qualification provision of the Constitution or statute does not refer to 'eligibility,' but to 'holding' of office, even the courts adopting the view that where no time for determining eligibility is specified, eligibility is ordinarily to be determined as of the time of election, are inclined to hold that removal of disqualification before the time fixed for the commencement of the term of office qualifies the incumbent. [Citing cases] And, a fortiori, it is so held by the courts which subscribe to the contrary view, and the courts whose view is not definitely fixed one way or the other."

In searching for the Missouri law relative to this question, your attention is called to the following cases:

In State ex rel. Owens v. Draper, 45 Mo. 355, l.c. 357, the court stated:

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"By the phrase 'shall not be eligible,' I do not think it was intended to prohibit a person who occupied the position of judge from running for or being elected to the Legislature. But if he should run and be elected, he would have to make his choice of which office he would retain, and his acceptance of one would necessarily operate as a vacation of the other. Therefore it follows that when Owens qualified and took his seat in the Legislature he elected to vacate and abandon the office of circuit judge."

In State ex inf. Major ex rel. Ryors v. Breuer (1911), 235 Mo. 240, 138 SW 515, the court quoted the above language from the Draper case, supra, and then stated, l.c. 516-517:

" \* \* \* The law as declared in that case is directly applicable and controlling upon the point under consideration in the case before us. It may be conceded, and it seems to be the fact, that, as stated in 29 Cyc. 1376, 'Most of the cases hold that the term "eligible" as used in a Constitution or statute means capacity to be chosen, and that therefore the qualification must exist at the time of the election or appointment;' but there is respectable authority to the contrary, including a decision of this court, and we think based upon the better reason."

In State ex inf. Mitchell ex rel. Goodman v. Heath, 132 SW2d 1001, l.c. 1005, the Supreme Court stated:

"It was contended that 'the word "eligible," as used in Constitutions and statutes, concerning elections to office, means the capacity to hold the office at the time of the election, so that the subsequent removal of the disability will not remove the incompetency.' While there are two conflicting lines of authorities on this question in this country, this court held against this contention and decided that the Constitution and statute did not mean eligible at

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the time of election, but, instead, meant eligible at the time of commencement of the term and of taking possession of the office. See 46 C.J. 949, § 58; 22 R.C.L. 403, § 43; 88 A.L.R. 812 note; 24 R.C.L. 571, § 16.  
\* \* \*

When the Constitution or statute does not specify the time when the conditions of eligibility must be present, the above three cases place Missouri with the majority view that eligibility to public office must be determined with reference to conditions existing at the time of commencement of the term of office. In the Draper and Breuer cases, supra, the statutory or constitutional provisions involved provided that persons without certain qualifications would not be eligible to hold the office. In the Heath case, supra, the statute provided that persons should have certain qualifications within a period of time preceding their election to the office. In none of these cases was the statutory or constitutional provision as strong or as clear as Section 8 of Article VII of the Constitution or Section 58.030, RSMo 1949, quoted above and referring to the office of coroner. Both the constitutional and statutory provisions quoted above explicitly say that no person shall be elected or appointed to the office unless he be a citizen of the United States.

Three Missouri cases dealing with the office of school commissioners or county superintendents of schools are: State ex rel. Weed v. Meek, 129 Mo. 431, 31 SW 913; State ex inf. Chinn, Prosecuting Attorney, ex rel. Botts v. Hollowell, 288 Mo. 674, 233 SW 405; and State ex inf. Burgess, Prosecuting Attorney, ex rel. Hankins v. Hodge, 320 Mo. 877, 8 SW2d 881. These cases construed qualification statutes which required the officeholder to "hold a certificate" or "diploma" at the "time of his election" or "when elected." All three cases held that the qualification must be present at the time of the election in compliance with the language of the statute. The case of State v. Heath, supra, is a more recent case than these three cases and could be construed to weaken this holding, since the statute in that case provided that school directors should "have paid a state and county tax within one year next preceding his, her or their election" and the court held that the payment of taxes prior to the time prescribed for taking the oath of office would comply with the requirements of the statute. However, we are not required to choose between these views. In either situation, the person described in your opinion request is not qualified.

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Under the facts stated in your opinion request it is clear that Dr. Shaw is not within the express provisions of the Constitution and statute that the coroner must be a citizen at the time of his election. Also, under the facts of the opinion request, he was not qualified prior to the time of the commencement of the term of office, and he cannot come under the rule of the three Missouri cases cited above that the time of his eligibility should be determined as of the time of the commencement of the term of office.

Section 58.020, RSMo 1949, provides as follows:

"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."

Thus, the term of office for coroner would begin on the first day of January, 1961. In your opinion request you stated that Dr. Shaw did not become a citizen until the early part of February, 1961, and therefore he did not qualify prior to the commencement of the term of office.

This office issued an opinion on March 29, 1950, to Mr. Duncan J. Jennings, Prosecuting Attorney of Montgomery County, holding that a person who was not eligible to hold the office of probate judge on the date of the commencement of the term of office cannot qualify for the office four months after the beginning of the term. This office feels that this holding in the previous opinion is still valid.

The plain language of the Constitution and statute, and the decisions in the Meek, Hollowell and Hodge cases, show that Dr. Shaw is not qualified for the office of coroner because he was not a citizen at the time of his election. Dr. Shaw would not be qualified for the office of coroner because he was not a citizen at the time of the commencement of the term of office of coroner, and he therefore cannot come within the provisions of the Missouri view expressed in the Breuer and Heath cases.

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Following this reasoning, we must hold in the instant case that Dr. Shaw was not qualified to be elected to the office of coroner at the time of the election in November, 1960, and he was not qualified to hold the office of coroner on the day of the commencement of the term of that office because he was not a citizen. Because he was not qualified under either situation, he is not entitled to take the office of coroner at a later date by virtue of his election thereto, even though he subsequently removes the disqualification of lack of citizenship by becoming a citizen one month after the date of the commencement of the term of office.

CONCLUSION

It is the opinion of this office that a person who is not a citizen and therefore not eligible to hold the office of coroner on the day of his election and on the day of the commencement of the term of office could not thereafter be qualified to take the office by becoming a citizen one month after the beginning of the term.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Wayne W. Waldo.

Very truly yours,

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THOMAS F. EAGLETON  
Attorney General

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