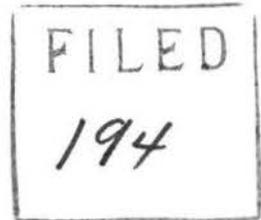


OFFICERS: Public defender offices created
PUBLIC DEFENDERS: under the provisions of Senate
GENERAL ASSEMBLY: Committee Substitute for House
Bill No. 1314, 76th General As-
sembly, Second Regular Session, may be abolished during the terms
of the incumbent public defenders. The incumbents have no right
to any salary after the offices are abolished.

OPINION NO. 194

May 29, 1973

Honorable Morris G. Westfall
Representative, District 133
Room 236A, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Westfall:

This opinion is in response to your request asking:

"If legislation is passed abolishing the full time Public Defender office in one judicial district and establishing an appointed counsel program, how long will the full time Public Defender be allowed to receive the Public Defender salary?"

Public defenders are appointed under the provisions of subsection 2, section 3 of Senate Committee Substitute for House Bill No. 1314, 76th General Assembly, Second Regular Session, for a term of four years. That subsection provides:

"2. The defender shall hold office for a term of four years, beginning on the first day of January following his appointment, but if a public defender is appointed before January 1, 1973, he shall hold office until January 1, 1973, and he may then be appointed for a full four year term beginning January 1, 1973. The defender may be reappointed for additional terms of four years."

In State ex rel. Voss v. Davis, 418 S.W.2d 163 (1967), the Missouri Supreme Court held that a public officer has ". . . no vested nor private property right in a public office . . ." or its term. In Davis the court quoted with approval this statement from Sanders v. Kansas City, 162 S.W. 663, 665 (K.C.Mo.App. 1914):

Honorable Morris G. Westfall

". . . [A]n officer elected or appointed even for a definite term takes office with the implied understanding that the power which created the office may abolish it before the expiration of his term, in which event he will find himself out of office. . . ."

It is our view that the legislature having created the office has the power to abolish the office. When the office is abolished, the incumbent has no further right to the emoluments of the office because the office then no longer exists.

It should be clear, however, that any legislation to abolish the office during the term of an officer should address itself clearly to that purpose because the Missouri courts are reluctant in the case of any ambiguity whatsoever to hold that an office with a term, whether elective or appointive, is vacated or abolished. Cf. State ex rel. Hall v. Vaughn, 483 S.W.2d 396 (Mo. banc 1972). In addition, it is clear that such legislation cannot be specifically designed to oust an incumbent and must not fall within the category of special legislation.

CONCLUSION

It is the opinion of this office that public defender offices created under the provisions of Senate Committee Substitute for House Bill No. 1314, 76th General Assembly, Second Regular Session, may be abolished during the terms of the incumbent public defenders. The incumbents have no right to any salary after the offices are abolished.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General