

OFFICERS' COMMISSIONS: When proper commission was not delivered to Public Administrator by prior Governor and prior Secretary of State, same should be issued by the present Governor, properly attested by the present Secretary of State.

January 16, 1945

Honorable Wilson Bell  
Secretary of State  
Jefferson City, Missouri



Dear Sir:

In your recent request for an opinion from this office it is stated that the County Clerk of Boone County, Missouri, on December 8, 1944, duly certified to the former Secretary of State the election of Mr. Fred B. Beaven, as Public Administrator of Boone County, Missouri, on November 7, 1944. It is further recited that a commission was issued to Mr. Beaven by the then Governor of Missouri but was not signed by the then Secretary of State; that this commission was forwarded to the County Clerk, who returned it to the Secretary of State for his signature; that according to the records of the former Secretary of State the commission was then signed by him and mailed to the County Clerk of Boone County; and that, on January 10, 1945, the County Clerk informed you that the commission had not been returned to him. You submit the following question:

"At the request of Governor Phil M. Donnelly, I ask you for an opinion as to the legal manner to handle this matter."

Section 23 of Article V of the Constitution of Missouri provides:

"The Governor shall commission all officers not otherwise provided for by law. All commissions shall run in the name and by the authority of the State of Missouri, be signed by the Governor, sealed with the Great Seal of the State of Missouri, and attested by the Secretary of State."

Section 12996, R. S. Mo. 1939, requires the Secretary of State to affix the seal of the state to and countersign all commissions required by law to be issued by the Governor.

Section 295, R. S. Mo. 1939, provides among other things that the public administrator shall give bond "approved by the court \* \* \* which said bond shall be given and oath of office taken on or before the first day of January following his election."

Section 297, R. S. Mo. 1939, has the following provision:

"His certificate of election, official oath and bond shall be filed and recorded in the office of the clerk of said court, and copies thereof, certified under the seal of such court, shall be evidence. \* \* \* \* \*"

It is thus apparent that the Legislature has not "otherwise provided for" the commissioning of public administrators and that the duty devolves upon the Governor to issue such commissions. Adams v. Harper, 20 Mo. App. 684.

If it be true that a properly executed commission has not been delivered to the Public Administrator, then a commission for such office should be issued by the present Governor with the seal of the State of Missouri affixed thereto and countersigned by the Secretary of State.

CONCLUSION

It is, therefore, the opinion of this office that if a properly executed commission has not been heretofore delivered to the Public Administrator of Boone County, Missouri, such should be issued and delivered by the present Governor, duly attested by the present Secretary of State, to such official.

Respectfully submitted,

APPROVED:

VANE C. THURLO  
Assistant Attorney General

HARRY H. KAY  
(Acting) Attorney General

VCT:CP