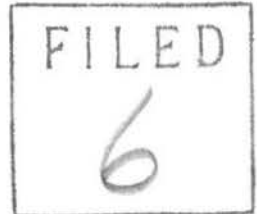


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SHERIFF'S OFFICE: VACANCY: When a vacancy occurs in the office
SPECIAL ELECTION: TENURE: of Sheriff, 9 months prior to a general election, the person elected at a special election called by the Co. Court, may hold the office under his commission for the complete period of the unexpired term and until his successor is elected and qualified, at the general election for that office in 1948.

November 26, 1945



Honorable Wilson Bell
Secretary of State
State of Missouri
Jefferson City, Missouri

Dear Secretary Bell:

Your letter requesting an opinion of what period the tenure of office will be of the Sheriff elected at a special election recently held in Barton County, Missouri, has been received.

Your letter states:

"At the request of the Governor's Office, I am referring to you here-with the attached letter from the County Clerk of Barton County, relative to the commission issued by Governor Phil M. Donnelly to J. D. Bassett, the newly elected Sheriff of Barton County, wherein it states: 'to fill the unexpired term and until his successor is elected and qualified.'

"I will appreciate an early opinion from you in this matter."

Your request for this opinion is based upon the contents of a letter submitted to you, dated November 8, 1945 by Honorable Hollis Stockdale, County Clerk of Barton County, Missouri.

It appears from Mr. Stockdale's letter that the Sheriff of Barton County, elected at the November general election in 1944, resigned his office on October 6th, last, and that the present Sheriff was elected on October 30, at a special election.

The statutes of this State, Section 13143, R.S. Mo. 1939, prescribe the procedure to fill a vacancy in the office of Sheriff when such vacancy may occur from any cause. That part of said Section 13143, providing for a special election, is as follows:

"Whenever from any cause the office of sheriff becomes vacant, the same shall be filled by the county court; if such vacancy happen more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold said office until the person chosen at such election shall be duly qualified, otherwise the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified. * * *".

Section 11509, R.S. Mo. 1939, excepts the office of Sheriff from the offices the Governor may fill by appointment when a vacancy occurs. That exception leaves Section 13143, supra, as constituting the sole method provided in our statutes for filling a vacancy in the office of Sheriff.

Section 13143 was first enacted by the Legislature in 1887, Laws 1887, page 281. The evident intention and purpose of the Legislature was to put into operation a method for filling a vacancy in the office of Sheriff because of the terms of Section 5527, R.S. Mo. 1879, now Section 11509, R.S. Mo. 1939, excepting that office from public offices to be filled in case of a vacancy, by the Governor. There was sound reason for this, we believe. Section 11509, R.S. Mo. 1939, permits, and the same section in previous revisions permitted, the Governor to appoint where a vacancy in those offices not so excepted happens until the next general election. The Legislature, mindful of the right of the people to make their own choice of a Sheriff in case of a vacancy in the office because his official duties vitally affect so many of the rights of the people, removed this office from the appointive power of the Governor, and placed it temporarily, in the

hands of the County Court with the mandatory duty attached to call a special election immediately if the vacancy happened more than nine months prior to a general election. This Section undoubtedly means that the person elected Sheriff at such special election shall hold the office for the full remaining period of the term until the next general election for Sheriff, in this case until 1948.

The people having the right, and having thus exercised the right to elect a Sheriff to fill the vacancy for the remainder of the unexpired term in this case, the matter would seem to be at an end. Surely no one would be able to read into the statute, Section 13143, words requiring two elections to fill one vacancy in the office of Sheriff.

This statute cannot, and should not, be construed to require the vain and useless procedure of the expense and effort of two elections.

In case of appointments in elective offices by the Governor to fill vacancies under said Section 11509, the rule is different. It has been held by our Supreme Court in such cases that the remaining period of the term after a vacancy happens must be filled at the next ensuing general election after the appointment. There are two decisions by our Supreme Court so holding. One of these cases is the case of State ex inf. vs. Barrett, Attorney General, ex rel. Shumard vs. McClure, 299 Mo. 688, which was a case where a vacancy occurred in the office of County Treasurer. The Supreme Court held that an election was properly held at the next ensuing general election to fill the remainder of the unexpired term succeeding an appointment made immediately upon the vacancy occurring. In so holding, the Court said:

"Originally special elections were provided for to fill vacancies so as to cut short the tenure of appointees. Apparently the expense and trouble of having special elections to fill vacancies caused the Legislature in 1879 to provide for vacancies to be filled by appointment until the next succeeding general election. This shows that the legislative policy of the State has

been to fill a vacancy for an elective office by election as soon as practicable after the vacancy occurs."

The other one is the case of State ex rel. Bothwell, Relator, vs. Green, Clerk of the County Court of Pettis County, Missouri, 352 Mo. 801. That was a case where a vacancy had occurred in the office of County Collector of Pettis County, Missouri. In holding that the office was open for election at the next general election after the vacancy took place, the Supreme Court, l.c. 807, 808, said:

"The legislative policy for filling vacancies has been described by the learned Judge White in State ex inf. Barrett v. McClure, 299 Mo. 688, 253 S.W. 743. That case construed Section 11509 and held it plainly provided an election may be had for an unexpired term and the governor would have no authority to make an appointment which would conflict with such provision. Judge White then stated: 'Originally special elections were provided for to fill vacancies, so as to cut short the tenure of appointees. Apparently the expense and trouble of having special elections to fill vacancies caused by the legislature in 1879 to provide for vacancies to be filled by appointment until the next succeeding general election. This shows that the legislative policy of the state has been to fill a vacancy for an elective office by election as soon as practicable after the vacancy occurs.'

"In as much as the unexpired term of the office of collector for Pettis County must be filled at the coming general election relator is entitled to the relief he seeks. Our peremptory writ should issue ordering the

acceptance and filing of his declaration of candidacy for that office and placing his name on the ballot."

The electorate of Barton County having filled the vacancy by a special election, which happened upon the resignation, October 6, of the then Sheriff, according to the terms of said Section 13143, as an exception to the elective offices to be filled, upon a vacancy, by the Governor according to Section 11509, there cannot be another election in said office until 1948, at the regular general election for the election of a Sheriff. The present Sheriff, we believe, was therefore elected for the full period of the remaining unexpired term of the Sheriff who resigned on October 6, 1945. We think this is so, else no special election would have been provided for under the terms of Section 13143. If said Section 13143 had not provided for an exclusive method for filling the full unexpired term of the Sheriff upon a vacancy happening, the Sheriff's office would not have been excepted from the terms of Section 11509, we believe. The Governor would then have had the appointive power to fill the vacancy and his appointee would hold office until the next ensuing general election. We believe Section 13143 stands out as an exclusive plan of procedure in filling a vacancy in the office of Sheriff to the end that when a special election is had and a Sheriff is elected he will hold office for the full period of the unexpired term.

CONCLUSION.

It is, therefore, the opinion of this Department that:

- 1) Under the terms of Section 13143, R.S. Mo. 1939, when a vacancy happened on October 6, 1945, by the resignation of Mr. C. E. Austin, the then Sheriff of Barton County, and Mr. J. D. Bassett was elected at a special election called by the County Court of Barton County, Mr. Bassett was elected for the full period of the unexpired term for which Mr. Austin was elected in 1944, and that Mr. Bassett will hold the office until the first day of January after the general election in November, 1948, at which time a Sheriff will be elected in Barton County.

Honorable Wilson Bell

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November 26, 1945

2) That the words written into the commission of the newly elected Sheriff of Barton County wherein it states: "to fill the unexpired term and until his successor is elected and qualified", are pertinent and proper in designating the period Mr. J. D. Bassett shall hold the office, and, under the terms of said Section 13143, have the effect of giving him a tenure in office until the first day in January after the next ensuing general election to be held in Barton County in 1948, the regular general election to elect a Sheriff in Barton County, Missouri.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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