

ELECTIONS - - Officer, such as county clerk, must
SECRETARY OF STATE - pay over and account for all moneys
received before eligible to office,
Article II, Sec. 19, Missouri Constitution.

December 12, 1934.

12-18



Honorable Dwight H. Brown
Secretary of State
Jefferson City, Missouri

Dear Sir:

In answer to your inquiry of December 11, 1934 with reference to issuing a commission to J. A. Hall, claimant to be the county clerk elect of Stone County, the facts submitted to you in the statement of J. B. Norman indicate that he is short in public funds to both the State and County, which facts we have this day verified from the State Auditor's report of the audit made in Stone County by the State Auditor of Missouri.

I call your attention to Section 19 of Article II of the Constitution of Missouri:

"That no person who is now or may hereafter become a collector or receiver of public money, or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the State of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all the public money for which he may be accountable."

The county clerk is a person who receives public money. Section 11666, R. S. Mo. 1929 requires the county clerk to give a bond conditioned that he will "pay over all moneys which may come to his hand by virtue of his office, * * *".

#2 - Honorable Dwight H. Brown

Under Section 11824, the county clerk is required, on the first days of January and July annually, to pay over all fees in his hands belonging to others to the treasurer of the county.

The use of the term "eligible", as used in the above constitutional provision, has reference to the date when the officer is inducted into office. State ex rel. v. Dunn, 277 Mo. 38; 207 S. W. 110.

Ordinarily, under Section 11313, R. S. Mo. 1929, the Secretary of State is required to compare the abstract of votes cast for the respective candidates for county offices and to certify to the Governor the name of the candidate receiving the highest number of votes for each office.

It appears from the wording of the constitutional provision that a person may be elected who has not accounted for and paid over all public money coming into his hands at the time of the election, but in order to be inducted into the office at the beginning of the term for which he is elected, he must have, subsequent to such election and prior to the beginning of the new term of office, paid over all, and accounted for all, such public moneys to the proper authorities. Unless he does so, he is ineligible to take over the office for the new term.

It is, therefore, the opinion of this office that no commission should be issued to J. A. Hall as county clerk of Stone County for the new term beginning on the first Monday in January, 1935 until he shall have complied with the constitutional mandate and paid over and accounted for all fees coming into his hands. Ordinarily, an officer holds his office until his successor is elected and qualified. However, due to the disqualification in this case, Mr. Hall will be ineligible to receive a commission or to enter upon the discharge of his duties as county clerk on the first Monday in January, 1935, in the event he has not accounted for and paid over all public moneys by the first Monday in

#3 - Honorable Dwight H. Brown

January, 1935. If ineligible to take over the office on the first Monday in January, 1935, for the same reason he would be ineligible to continue in office, and there would be a vacancy to be filled by appointment by the Governor.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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