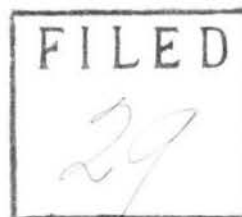


Chiropractic Board: Date Governor appointed members, when confirmed by senate relates back to date of appointment-- Expenses incurred while in discharge of duties payable out of Chiropractic appropriation fund.

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Dr. Jerome F. Fontana, Secretary
State Board of Chiropractic Examiners.
2605 Chippewa Avenue
St. Louis, Missouri

Dear Doctor Fontana:

This is to acknowledge your letter of May 5, 1933, which is as follows:

"It is the wish of the members of the State Board of Chiropractic Examiners, that an opinion be rendered on the following case:

The members of this Board received their commission on April 19th and on the 21st a meeting was held in Jefferson City. At that time, we members believed that we had been confirmed, but shortly after our meeting we were informed that we did not have the power to act. However, the members of this Board have since been confirmed by the Senate; now the question is, can we, the members of the Board, be paid for our expense from the appropriation of our fund for that meeting?

Thanking you in advance, I am, "

We obtained from the office of the Secretary of State information, that on April 18, 1933, four members were appointed to your board by Governor Park to take the places of the four members of the retiring board. Two members of the retiring board were never confirmed by the Senate, and the commissions of the other two members expired January 1, 1933.

To answer your inquiry, two questions present themselves.

First; On what date did the appointment of the incoming members become effective? Second; Was the meeting that was held on April 21st, for the purpose of discharging the actual duties of the board.

It will be seen that the second question must fail unless the present board members were at that time (April 21st) duly appointed and members of said board.

The act creating the Board of Chiropractic Examiners and regulating the practice of Chiropractors was approved March 14, 1927, and was passed by the fifty fourth General Assembly which adjourned on April 4, 1927. This act is now found in Chapter 105 R. S. No. 1929.

We now proceed to determine the date the appointments became effective, and we look to the statutes creating same.

Section 13547 R. S. No. 1929, in the parts pertinent to the present inquiry reads as follows:

"A State Board of Chiropractic Examiners is hereby created, consisting of five persons, etc." * * "

And further:

" * * to be appointed by the governor, with the advice and consent of the senate in the following manner, to-wit: Within thirty days after the passage of this law, the governor shall appoint five persons as aforesaid etc." * * "

And further:

" * * They shall constitute the first board of chiropractic examiners, their term of office shall expire one in one year, two in two years, and two in three years, from the date of appointment. At the expiration of the term of office of any member of said board the Governor shall appoint a member for a term of three years. All vacancies shall be filled by the governor in like manner, and the person appointed to fill such vacancy shall serve for the unexpired term only."

In reading this section it will be seen that the Legislature intended that some of the appointments should be made when the Senate was not in session.

In the case of State ex inf. Elliott W. Major, Attorney-General, ex rel. Jesse W. Sikes, v. W. W. Williams, 333 Mo. 266, the court in its opinion said: (l.c. 263)

" * * * It is fundamental that in the construction of statutes the courts should so interpret them as to conform with the intent of the law-making power that enacted them. * * * "

And further at page 284:

" * * * Laws must be given a reasonable construction, keeping in view the purposes of as well as the circumstances surrounding their enactment. * * * In the meantime, such appointee, after having otherwise qualified under the act, is entitled to the office until such time as the Senate may pass adversely upon his appointment. Should the Senate refuse to confirm, the Governor would then have to appoint another. This at least has been the uniform course pursued by all prior administrations dealing with legislative enactments of this character. * * * "

At page 1012, vol. 17, American and English Annotated Cases, is found the following:

" * * * In Dyer v. Bayne, 54 Md. 87, it appeared that the governor nominated the plaintiff as successor to the defendant in the office of tobacco inspector, and sent his name to the senate for the advice and consent of that body. The senate did not act upon his nomination for several weeks, but it was finally confirmed. Upon the question as to when the term of the plaintiff commenced, it was held that the confirmation of the senate related back to the act of the governor in making the nomination, and, hence, that the plaintiff's term began on the day of his nomination. * * * "

The above case, (Dyer v. Bayne, 54 Md. 87) was cited and quoted from in the case of Little v. Schul, 118 Md. 462.

The terms of two members of the old board expired on January 1, 1933, and the other two had not been confirmed, and these persons constituted the board until April 18th, when they were relieved of their duty by the appointment of the present members.

Section 5, Article 14, of the Constitution of Missouri provides:

"In the absence of any contrary provision all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."

The law does not contemplate a vacancy in any office and for that reason incumbents which in this case were the former board members would hold office until their successors, the present board members were appointed.

In the case of State ex rel.v.Seay, 64 Mo 68, the court said:

"* * * The law abhors vacancies in public offices, and great precautions are taken to guard against their occurrence. The policy of the law is to have some one always in place to discharge the duties of public offices, and in a doubtful case the construction of a law fixing the tenure of an office would be greatly influenced by that consideration.* * *"

We therefore hold that on April 18th, the term of office ceased for the old board and the term began for the present board by virtue of the Governor's appointment. Of course, after the present board was appointed by the Governor, the names of such members were presented to the Senate, while it was in session, and the Senate acted, as you state, favorably upon the appointments. It may then be said that these appointments were made by the Governor with the advice and consent of the senate.

We now proceed to answer the second question in your inquiry, same being, whether or not expense accounts for attending the meeting on April 21st should be paid out of the appropriations from your fund.

May 22, 1933

Section 13548 R. S. Mo. 1929, provides in part the following:

"The board shall meet and organize by electing a president, secretary and treasurer, each to serve for a period of one year." * * *

And further:

* * * Four members shall constitute a quorum. The members of the board shall meet and organize in Jefferson City, Missouri, within thirty days following their appointment." * * *

And further:

* * * Each member of the board, except the secretary, shall receive compensation for his or her services, the sum of \$10.00 per day while discharging the actual duties of the board, and each member shall receive traveling expenses while actually employed in the discharge of his or her duties as members of said board." * * *

You did not state the purpose of the meeting or if it was to discharge the duties of the board. We assume it was for such and particularly for the purpose of organization. If such be the facts, it is our opinion that the members should be paid for their expenses from the appropriation out of your fund.

Trusting this answers your inquiry, we are,

Yours very truly,

JAMES L. HORNBOSTEL,
Assistant Attorney General.

APPROVED

Attorney General.

JLH:MM