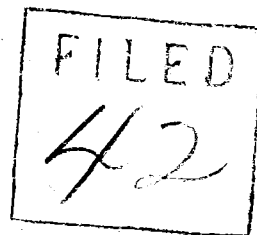


COMMISSIONER OF
AGRICULTURE:

Under provisions of Senate Bill No. 10 of the 64th General Assembly, after September 10, 1947, Commissioner of Agriculture will have no "term of office" and salary provided for in Senate Bill No. 10 will be paid to Commissioner of Agriculture.

August 16, 1947



Mr. B. H. Howard, Comptroller
Department of Revenue
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date, reading as follows:

"Senate Bill No. 10, 64th. General Assembly, fixes the salary of the Commissioner of Agriculture at \$6,500.00 per annum.

"We will appreciate an opinion in regard to the effective date of that rate with respect to the present commissioner."

Senate Bill No. 10 of the 64th General Assembly, effective September 10, 1947, repeals and reenacts, with modifications, Section 14025, R. S. Mo. 1939. Section 14025 of such bill makes only three changes in reenacting Section 14025, R. S. Mo. 1939. The changes are:

(1) Section 14025, R. S. Mo. 1939, provides, "who shall hold his office for a period of four years," and Section 14025 of the bill provides, "who shall hold his office for a term concurrent with that of the governor and until his successor is appointed and qualified."

(2) Section 14025, R. S. Mo. 1939, provides that the compensation of the Commissioner shall be \$3,000.00 per year, and Section 14025 of the bill provides that this compensation shall be \$6,500.00 per year.

(3) Section 14025, R. S. Mo. 1939, provides, "and shall be subject to removal from office for cause by the governor at his pleasure," and Section 14025 of the bill provides, "and shall be subject to removal from office by the governor at his pleasure."

Section 13, Article VII, of the Constitution of Missouri provides as follows:

"The compensation of state, county and municipal officers shall not be increased during the term of office; nor shall the term of any officer be extended."

In view of this constitutional provision, the first question to be determined is whether, under the provisions of Section 14025 of the bill, the Commissioner of Agriculture will have a "term of office" after September 10, 1947.

In the case of State ex rel. v. Gordon, 238 Mo. 168, the Supreme Court had before it the question of whether or not the Adjutant General of the State of Missouri was entitled to an increase of salary from \$2,000.00 to \$2,500.00 per year, provided for in an act of the Legislature found in Laws of 1909, page 674, Section 3, and decided that the Adjutant General was entitled to such increase on the ground that such an officer did not have a "term of office" within the meaning of the constitutional prohibition against increasing the compensation of state, county or municipal officers during their terms of office. The court said, l. c. 180-181:

"Recognizing the precision of definition judicially indulged in the exposition of the constitutional provision now up, as already indicated, we now come to a closer view of the case and to the application of the doctrines announced to the facts in judgment. The final question is: Considering the terms of the law of 1905 under which relator was appointed, does he have a 'term of office' in a constitutional sense? Clearly no. The statute provides that the Adjutant-General shall be appointed by the Governor, that he shall be military secretary to the Governor and that he 'shall hold office during the term of the Governor and may be removed by him at his pleasure.' If the statute had said he should hold office 'during the term of the Governor' and had broken off at that point we would have a different case to deal with. In such case his term would have the same boundaries as the Governor's term. By referring to this certainty, the term of the Adjutant-General would be made certain and the maxim, id certum est, would control the situation.

But the law does not break off there and neither should we in the exposition of it. It goes on to say in the same breath that the Governor may remove him at 'his pleasure.' The Governor's breath, under the law, made him, and the Governor's breath is left to unmake him. The appointing power has left to it the disappointing power unchecked, free of limit in time, place or circumstance. No man who holds office at the pleasure of another can be said to have a certain fixed term of office. The two ideas are radically antagonistic and in right reason they cannot both apply at the same time to the same thing. The Governor's 'pleasure' has no fixed bounds discernible to the judicial eye." (Emphasis ours.)

The fact that Section 14025 of the bill refers to a "term" of the Commissioner of Agriculture is surplusage, since such section further provides for removal of the Commissioner of Agriculture at the pleasure of the Governor, and the court held in the Gordon case that "no man who holds office at the pleasure of another can be said to have a certain fixed term of office."

That part of the opinion in the Gordon case holding, l. c. 182:

"Our learned Attorney-General makes an ingenious argument against such construction. As we grasp it his contention is that relator's term of office has a fixed and definite tenure, to-wit, that of the Governor, and that the removal part of the statute brings into view a new and independent matter, viz., the power of removal which may be exercised at pleasure. But we do not think a fair construction of the law allows it to be taken apart and then joined together so as to make of it two independent provisions. The clause in hand is inseperable, relates to the same subject-matter and what the Legislature hath joined together we ought not put asunder."

is authority, we believe, for holding that, since Section 14025 of the bill contains the provision that the Commissioner may be removed at the pleasure of the Governor, such provision shows conclusively that the Commissioner does not hold a "term of office."

It has been held by the Supreme Court of this state that a legislative office may be controlled, modified or repealed by the body creating it. The Supreme Court said in *State ex rel. v. Davis*, 44 Mo. 129, l. c. 131:

" * * * A mere legislative office is always subject to be controlled, modified, or repealed by the body creating it. In England, offices are considered incorporeal hereditaments, grantable by the crown, and a subject of vested or private interests. Not so in the American States; they are not held by grant or contract, nor has any person a private property or vested interest in them, and they are therefore liable to such modifications and changes as the law-making power may deem it advisable to enact. * * *"

Therefore, the Legislature had the power to repeal Section 14025, R. S. Mo. 1939, and reenact, with modifications, such section in Senate Bill No. 10.

A general rule of statutory construction is that when a statute is simultaneously repealed and reenacted, the repealed statute is continued in effect as modified by the reenactment of such statute. In the case of *State v. Bradford*, 314 Mo. 684, l. c. 697, the court said:

"While the Act of 1921, Laws 1921, page 206, purports to repeal Section 3973 of Revised Statutes 1919, yet as the same law was reenacted with a modification, it is simply an amendment of the law of 1919, and is a continuation of the latter as amended. * * *"

Therefore, no new appointment will be necessary to the position of Commissioner of Agriculture after the effective date of Senate Bill No. 10, as the effect of Section 14025, R. S. Mo. 1939, as reenacted, with modifications, in Senate Bill No. 10, was only to change the office of Commissioner of Agriculture from an office having a fixed term to an office having no term, in the sense of Section 13, Article VII, of the Constitution.

CONCLUSION

It is the opinion of this department that after September 10, 1947, the effective date of Senate Bill No. 10 of the 64th General Assembly, the Commissioner of Agriculture will have no

Mr. B. H. Howard

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"term of office," and that after September 10, 1947, such Commissioner will be entitled to the compensation provided for such office in Section 14025 of Senate Bill No. 10 of the 64th General Assembly, and that such officer will, after such date, hold his office at the pleasure of the Governor.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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