LIBRARIES : Provision limiting term of members of board of
CITY LIBRARIES: trustees of city library applicable to incumbents
CONSTITUTIONAL LAW: as well as those elected to board in future for
OFFICERS: first time.

March 6, 1956

Honorable DeVere Joslin
Member, House of Representatives
602 State Street
Rolla, Missouri

Dear Mr. Joslin:

This is in response to your request for opinion dated February 10, 1956, which reads as follows:

> "Under Section 182.190, it is stated that no member of the board shall serve for more than three successive terms and shall not be eligible for further appointment until two years after the expiration of the third term. This is one of the provisions passed during the past session. My question is: does this law retroact or does this three term provision begin when this became a law.
>
> "The Rolla Public Library Board is composed of nine members, five of them new. Of the four older members three would come the three term provision. We need these older members to help direct our board and they would be eligible if you should decide this law does not apply to the terms prior to passage of this section.
>
> "This will come before the city council May first and I would appreciate an answer before that time."

Your question arises out of House Bill No. 261, 68th General Assembly (Sec. 182.190, RSMo, Cum. Supp. 1955), which, with regard to the board of trustees of a city library, reads, in part, as follows:

> " * * * No member of the board shall serve for more than three successive full terms and shall not be eligible for further appointment to the board until two years after the expiration of the third term. * * *"

The Constitution of Missouri, 1945, Article I, Section 13, provides:

> "That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

It is a well-settled rule of construction that constitutional and statutory provisions are to be construed as having a prospective operation only unless a different intent is evident beyond reasonable question (State ex rel. Scott v. Direkx, 211 Mo. 568, 577, 111 SW 1). However, a statute is not retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing (Endlich on Interpretation of Statutes, Sec. 280, p. 377; State ex rel. Ross to Use of Drainage Dist. No. 8 of Pemiscot County v. General American Life Ins. Co., 336 Mo. 829, 85 SW2d 68, 74).

The standard definition of a retrospective law is as set forth in Dye v. School Dist. No. 32 of Pulaski County, 355 Mo. 231, 195 SW2d 874, 879, where the court said:

> " * * * A retrospective law is one that relates back to, and gives to a previous transaction, some different legal effect from that which it had under the law when it occurred. A statute is not retrospective merely because it relates to antecedent transactions, where it does not change their legal effect. * * *"

Quoting from Sedgwick on Statutory and Constitutional Law, the court said in State ex rel. v. General American Life Ins. Co., supra, SW2d l.c. 73:

> "'A statute which takes away any vested right acquired under existing laws, or creates a new obligation or imposes a new duty, or

> attaches a new disability, in respect to transactions already past is to be deemed retrospective or retroactive.'"

See also cases cited in Words and Phrases, Retrospective Law or Statute, page 231; 16 C.J.S., Constitutional Law, Section 414, page 856.

If the plain wording of a statutory or constitutional provision concerning eligibility to office because of length of tenure necessitates such a construction, it will be construed as a departure in the law, creating a new rule for the future and inapplicable to the incumbent. For example, the court reached that conclusion in State ex rel. Scott v. Dirckx, supra. However, the court, in holding that the constitutional provision limiting the term of sheriffs elected in 1908 did not apply to the incumbent, said at Mo. l.c. 579:

> "But for the unequivocal language of the amendment itself there would be great force in the argument that the provision limiting the term of a sheriff to four years is one of eligibility, which might refer to the past incumbency of the office as well as the future, but when it is borne in mind that the amendment of 1906 leaves nothing to implication but expressly repeals the former constitutional provision, to-wit, section 10 of article 9, of the Constitution of 1875, it seems to us that it marks a departure in the law and creates a new rule for the future. * * *"

The general rule with regard to statutory and constitutional provisions of this sort is stated in 67 C.J.S., Officers, Section 25, page 154:

> "Constitutional provisions limiting the time for which office may be held by one person continuously apply to a person elected before the adoption of the constitution. * * *"

Section 182.190, supra, by its wording establishes a disqualification applicable to incumbents, as well as others, who may in the future be elected to the board. The only reason for construing it otherwise would be if it is necessary to do so in order to avoid making it unconstitutional as retrospective in its operation.

We see no necessity for construing said section otherwise than according to its plain and obvious meaning. It attaches a new disability, but not "in respect to transactions already past." In other words, it is prospective in the sense that it applies only to future elections and does not purport to invalidate prior elections at which a candidate possessing the disqualification might have been elected.

It does not take away "any vested right acquired under existing laws." Although each citizen has a right to serve in public office subject to constitutional and statutory provisions limiting that right, such right is not a vested one, but contingent only. In State ex rel. McKittrick v. Bair, 333 Mo. 1, 15, 63 SW2d 64, 66, the court said:

> " * * * The same rule necessarily applies to the other interveners, who as public officers have no contractual right as to their terms of office or their compensation or any vested right in either, the same being subject to legislative control. State ex rel. Attorney-General v. Davis, 44 Mo. 129; Givens v. Daviess County, 107 Mo. loc. cit. 608, 17 S.W. 998; State ex inf. Crow, Attorney-General, v. Evans, 166 Mo. 347, 66 S.W. 355; Gregory v. Kansas City, 244 Mo. 523, 149 S.W. 466. * * *"

The Legislature has, in the absence of constitutional inhibition, the same right to provide disqualifications that it has qualifications for office. 67 C.J.S., Officers, Section 11, pages 123 and 125.

Since this statute is one of eligibility, is prospective in the sense that it is applicable only to future elections and is not retroactive within the meaning of Section 13 of Article I of the Constitution of Missouri, 1945, merely because the facts constituting the disqualification may have occurred antecedent to the passage of the act, we are of the opinion that it is applicable to incumbents as well as those who may in the future be elected to the board for the first time.

CONCLUSION

It is the opinion of this office that the provision of Section 182.190, RSMo, Cum. Supp. 1955 (House Bill No. 261, 68th General Assembly), limiting the term of office of members of the

Honorable DeVere Joslin

board of trustees of a city library to three successive full terms, is applicable to the incumbents as well as to those who in the future may be elected to the board for the first time.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. Inglish.

Yours very truly,

JOHN M. DALTON
Attorney General

JWI:ml