

OFFICERS:
REMOVAL:
TRUSTEES:

Trustee under Jones- Munger Act
may be removed at the pleasure of
County Court.

April 14, 1942

4-15

Hon. G. Logan Marr
Prosecuting Attorney
Morgan County
Versailles, Missouri



Dear Sir:

This is in reply to your letter of recent date, wherein you request an opinion from this Department, on the question of when and how a person who has been appointed by the county court to act as trustee under the Jones-Munger Act, may be removed.

The law providing for the appointment of such a trustee is as follows:

Section 11131 R. S. Mo. 1939

"It shall be lawful for the County Court of any County, and the Comptroller, Mayor and President of the Board of Assessors of the City of St. Louis, to designate and appoint a suitable person or persons with discretionary authority to bid at all sales to which Section 11130 is applicable, and to purchase at such sales all lands or lots necessary to protect all taxes due and owing and prevent their loss to the taxing authorities involved from inadequate bids. Such person or persons so designated are hereby declared as to such purchases and as title holders pursuant to collector's deeds issued on such purchases, to be trustees for the benefit of all funds entitled to participate in the

taxes against all such lands or lots
so sold. * * * * *

It will be noted here, that this statute does not fix the term for which such person is appointed as trustee. That being the case, we think the following rule applies. Volume 22 R. C. L. page 562 Section 266, provides in part as follows:

"When the term or tenure of a public officer is not fixed by law, the general rule is that the power of removal is incident to the power to appoint. The tenure not having been declared by law the office is held during the pleasure of the authority making the appointment. Hence in the absence of a constitutional or statutory provision as to the removal of public officers, the power of removal is considered as incident to the power of appointment. In such cases no formal charges or hearings are required in the absence of some statute on the subject.
* * * * *

This same rule is announced in Volume 46 C. J., page 984 Section 146, 147; also in Volume 91 A. L. R. 1093, this rule is announced. Among the various states which have applied this rule is the State of Missouri. At l. c. 1099, the annotator makes the following statement:

"In Hortsman v. Adamson (1903) 101 Mo. App. 119, 74 S. W. 398, where a clerk of court who was alleged to have appointed a deputy clerk for a four-year period was held not liable to him by reason of discharging him after less than two years' service, the court noted that the statute failed to define the period for which the deputyship should continue, said that 'where the law conferring the authority, under which the appointment is made, is silent as to any limitation of the right of removal, and the official term is unlimited, the absolute power of removal is an incident to the power of appointment to be invoked

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and applied at pleasure, without notice, and without legal liability for the results;' and added that 'subject to the supervisory control conferred by the law on the court, the discretionary right of appointment by the statute is unrestricted, and the like boundless authority of terminating the appointment by discharge must necessarily exist in the appointing official.'"

As stated above, this statute providing for the appointment of the trustee does not fix the term of office nor does it fix the qualification of such person, the entire matter rests in the discretion of the county court, which is the appointing power under the statute.

CONCLUSION

We are, therefore, of the opinion that the county court which is the appointing power under the statute, may at its discretion appoint such person as trustee and terminate such term at such time as it sees fit, and without notice or stating a reason for such termination.

Respectfully submitted

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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