

COUNTY TREASURER:

Term expires on April 1 in counties under
township organization.

December 17, 1940

Honorable C. G. Vogt
Prosecuting Attorney
Nodaway County
Maryville, Missouri

Dear Sir:

We are in receipt of your request for an opinion dated November 18, 1940, as follows:

"Will you please give me as soon as possible your opinion as to when the treasurer elect, 1940, takes office in Nodaway County. Nodaway County is under 40,000 population and under township organization."

In considering this question, the history of the legislation governing the office of county treasurer in counties under township organization should be briefly considered. For more than fifty years the statutes have provided that treasurers, in counties with township organization, should take office on the first day of April in the year following their election and should hold office for a term of four years. Section 12130 R. S. Missouri 1929, is as follows:

"On the Tuesday after the first Monday in November, 1912, and every four years thereafter, there shall be elected by the qualified voters of the several counties in this state a county treasurer, who shall be commissioned by the county court of his county, and who shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election, and shall hold his office

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for a term of four years, and until his successor is elected and qualified, unless sooner removed from office: Provided, that in counties having adopted, or that may hereafter adopt township organization, the term of office of said treasurer shall be extended to the first day of April next after the election of his successor."

This statute survived unchanged all terms of the Legislature since its enactment in 1885. It was amended by the Session Laws of 1933 at page 338, as follows:

"Sec. 12130. Election of treasurer--term of office.--On the Tuesday after the first Monday in November, 1936, and every four years thereafter, there shall be elected by the qualified voters in all counties of this state now or hereafter having a population of 40,000 or more inhabitants according to the last decennial United States census, and in all counties of less than 40,000 inhabitants if under township organization, a county treasurer, who shall be commissioned by the County Court of his County, and who shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election, and shall hold his office for a term of four years, and until his successor is elected and qualified, unless sooner removed from office: Provided, that in counties having adopted or that shall hereafter adopt township organization, the term of office of said treasurer shall be extended to the first day of April next after the election of his successor."

Under this amendment a county treasurer, where a township organization existed, would have assumed office April 1, 1937, and his term would have expired April 1, 1941. In 1937 the Legislature repealed Section 12130, as it existed in 1933, and enacted Section 12130c, found in Laws of 1937 at page 426, which is as follows:

"On the Tuesday after the first Monday in November, 1940, and every four (4) years thereafter, there shall be elected by the qualified voters in all counties of this State, now or hereafter having a population of 40,000 or more inhabitants according to the last Decennial United States Census, (except in counties having 75,000 and not more than 90,000 inhabitants) and in all counties of less than 40,000 inhabitants if under township organization, a county treasurer, who shall be commissioned by the County Court of his County, and who shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election, and shall hold his office for a term of four years, and until his successor is elected and qualified, unless sooner removed from office: Provided, that in counties having adopted or that shall hereafter adopt township organization, the term of office of said treasurer shall be extended to the first day of April next after the election of his successor. Provided further, that the present county treasurers shall remain in office until their successors are elected or appointed and qualified, unless sooner removed from office."

An examination of the provisos in each of the above sections pertaining to the office of treasurer under township organization discloses that those clauses providing that the term of office of such treasurer shall expire April 1 in the year following the election of a successor are identical. The reason for this exception in the case of treasurers under township organization may be found in Sections 12313 and 12323, R. S. Missouri 1929. The first of these provides that the county treasurer in counties having adopted township organization and who is ex-officio collector of such county shall make a full and complete settlement of all his accounts with the county court at a meeting to be held on the first Monday in March of each year. The latter section provides that the township collectors of the various townships shall also make settlements with the county court on the same date and shall at that time pay over to the county treasurer and ex-officio collector all money remaining in their hands collected on state and county taxes, and shall at the same time make a return of all delinquent or unpaid taxes. For these reasons the Legislature has fixed the term of the county treasurer and ex-officio collector to coincide with these annual settlements, the settlement having been completed in March, the new officer may enter upon his duties on the first day of April with a "clean slate." To permit the new officer to assume his duties on the first day of January would compel him to prepare a complete annual settlement within the next two months and doubtless result in considerable confusion.

The construction to be given statutes in this state is fixed by Section 655, R. S. Missouri 1929, which is in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases

having a peculiar and appropriate meaning in law shall be understood according to their technical import;
* * * * *

By the adoption of the identical language used in former statutes ending a term of county treasurers on April 1, we may assume that the Legislature intended to be consistent in order to make the terms of such treasurers uniform. Section 5, Article XIV of the Constitution of Missouri provides as follows:

"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."

We must assume that the Legislature had knowledge of the fact that a county treasurer elected in 1936 would, under Section 12130, enacted in 1933, hold office until April 1, 1941. In view of the above constitutional provision the Legislature would have doubtlessly terminated the office of such treasurer in specific language and they failed to do so.

CONCLUSION

It is, therefore, the conclusion of this department that a county treasurer, in a county having adopted township organization elected at the general election in November of 1936, is entitled to hold office until April 1, 1941, and until his successor is elected, qualified and commissioned.

Respectfully submitted

APPROVED:

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