CORONERS: Not eligible to said office for over four years continuously in any period of time.

May 19, 1936.

5-20

FILED 19

Honorable J. R. Womack, M. D.
Coroner of Texas County
Houston, Missouri

Dear Sir:

We acknowledge your request for an opinion, dated April 13, 1936, which reads as follows:

> "In recent instructions to Coroners sent out from your office you stated that a Coroner could not succeed himself if he had served four years.
>
> "I have served Texas County, as Coroner, for most of four years. What I would like to know if if I should resign now and be appointed to serve out the unexpired term, would I then be eligible for reelection? In conference with you yesterday I understood you to say that I could do this.
>
> "If the above arrangement would not be satisfactory could I resign before the four years were up and then be eligible for reelection?"

Article IX, Section 16, of the Missouri Constitution provides:

> "There shall be elected by the qualified voters in each county on the first Tuesday next following the first Monday in November, A. D. 1908, and thereafter every four years, a sheriff and coroner. They shall serve for four years and until their successors be duly elected and qualified, unless sooner removed for malfeasance in office. Before entering on the duties of their office, they shall give security

> in the amount and in such manner as shall be prescribed by law, and shall be eligible only four years in any one period. Whenever a county shall be hereafter established, the Governor shall appoint a sheriff and coroner therein, who shall continue in office until the next succeeding general election and until their successors shall be duly elected and qualified."

Article IX, Section 11, Missouri Constitution provides:

> "Whenever a vacancy shall happen in the office of sheriff or coroner, the same shall be filled by the county court. If such vacancy happen in the office of sheriff more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold office until the person chosen at such election shall be duly qualified; otherwise, the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified. If any vacancy happen in the office of coroner, the same shall be filled for the remainder of the term by such county court. No person elected or appointed to fill a vacancy in either of said offices shall thereby be rendered ineligible for the next succeeding term."

Article XIV, Section 5, Missouri Constitution 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."

Pursuant to the above constitutional provisions the Legislature has provided in Section 10167, R. S. Mo. the following:

> "On the first Tuesday after the first Monday in November, in the year 1880, and every two years thereafter, there shall be an election held in each township in this state, and in each ward of the city of St. Louis, for the election of a member of congress from each congressional district, of senators and representatives in those districts and judges of the county courts in those counties where the term of those elected has expired, and for sheriffs and coroners, and such other officers as may be required by law to be elected at such elections."

The Legislature has provided in Section 11196 R. S. Mo. 1929, the following:

> "All officers elected or appointed by the authority of the laws of this state shall hold their offices until their successors are elected or appointed, commissioned and qualified."

The people have a right to such period and in such a manner as they shall establish by their constitution, to cause or allow their public officer to return to private life, and to fill up vacant places by certain and regular elections and appointments. To this end are the provisions of the Missouri Constitution above quoted. Similar provisions may be found in the consitutions of other states from earliest times, regulating and controlling rotation and succession in office.

Luce, on Legislative Assemblies, p. 346, reads as follows:

> "Pennsylvania was the first colony to have the rotation idea put into its frame of government. William Penn's Charter of Liberties provided that (after seven years) when a member of the Provincial Council (the upper branch) ended his three years' term, he should be 'uncapable of being Chosen again for one whole year following that so all may be fittest for the Government and have Experience of the Care and burthen of it.' The provision disappeared in 1696, but it was not forgotten. When the Convention

of 1776, over which Benjamin Franklin presided, and which he no doubt inspired, created but one legislative body, it said: 'No person shall be cabable of being elected a member to serve in the House of Representatives of the freemen of this Commonwealth more than four years in seven.' It was also provided that a delegate of the State in Congress should serve no longer than two years successively and be incapable of reelection for three years afterward; that any person having served as a member of the Supreme Executive Council of the State for three successive years, should be incapable of holding that office for four years afterward; and that one third of the Council should be replaced each year. 'By this mode of election and continued rotation,' it was explained, 'more men will be trained to public business, there will in every subsequent year be found in the Council a number of persons acquainted with the proceedings of the foregoing years, whereby the business will be more consistently conducted, and moreover the danger of establishing an inconvenient aristocracy will be effectually prevented.'

"Franklin persisted to the end of his admiration of the idea. Madison reports him as saying in the Federal Convention: 'It seems to have been imagined by some, that the r eturning to the mass of the people was degrading the magistrate. This, he thought, was contrary to republican principles. In free governments, the rulers are the servants, and the people their superiors and sovereigns. For the former, therefore, to return among the latter, was not to degrade, but to promote, them. And it would be imposing an unreasonable burden on them, to keep them always in a

state of servitude, and not allow them, to become again one of the masters.' "

And further on pages 347 to 349 reads as follows:

"Another of the great men of the time who believed in rotation was Thomas Jefferson. His State had put into the Bill of Rights of the Constitution of 1776; 'The legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.' It was in the spirit of this that Jefferson prepared, probably not long after the framing of the Virginia Constitution, a resolution for the rotation of members of the Continental Congress. It was rejected, but is worth quoting for the light it sheds on one phase of the opinion of that day:

" 'To prevent every danger which might arise to American freedom by continuing too long in office the members of the Continental Congress, to preserve to that body the confidence of their friends, and to disarm the malignant imputation of their enemies: It is earnestly recommended to the several Provinces, Assemblies or conventions of the United colonies that in their future elections of delegates to the Continental Congress one half at least of the persons chosen be such as were

not of the delegation next preceeding, and the residue be of such as shall not have served in that office longer than two years.'

"When the Federal Constitution had been drawn, Jefferson wrote to Madison, December 20, 1787, that a feature of it be disliked, and strongly disliked, was the abandonment of the principle of rotation in office, 'and most particularly in the case of the President,' He was not the only man to reach that office who may have changed his views about the desirability of second terms.

"Maryland followed Virginia in making an abstract statement of the principle, but confined it to the executive branch, saying: 'That a long continuance, in the first executive departments of honor or trust, is dangerous to liberty; a rotation, therefore, in those departments, is one of the best securities of permanent freedom.' No other State referred to it until John Adams came to write the Constitution of Massachusetts. In 1776 he had given the idea half-hearted approval. 'A rotation of all offices,' he had said, 'as well of representatives as of counsellors, has many advocates, and is contended for with many plausible arguments. It would be attended, no doubt, with many advantages; and if the society has a sufficient number of suitable characters to supply the great number of vacancies which would be made by such rotation, I can see no objections to it. These persons may be allowed to serve for three years, and then be excluded three years, or for any longer or shorter term.' Four years later he put into the Bill of Rights of his State: 'In order to prevent those who are vested with authority from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause

> their public officers to return to private life; and to f ill up vacant places by certain and regular elections and appointments.' "

The arguments for and against rotation and non-succession in office are not new. It is for us to construe and harmonize the provisions of the Missouri Constitution according to the intention of the framers and in the light of historical background. What did the people mean when they provided that the coroner "shall be eligible only four years in any one period"? Construing this quoted phrase we must read and understand the context of both sections 10 and 11 of Article IX, supra. We see that these sections refer to one possible elective term and to two possible appointive terms of this constitutional office. Any one of the three exigencies provide separate constitutional terms of this office.

12 Corpus Juris, p. 707, Section 55, reads as follows:

> "The presumption and legal intendment is that each and every clause in a written constitution has been inserted for some useful purpose, and therefore the instrument must be construed as a whole in order to ascertain both its intent and general purpose and also the meaning of each part. It follows, therefore, that, as far as possible, each provision must be construed so as to harmonize with all others, yet with a view to giving the largest measure of force and effect to each and every provision that shall be consistent with a construction of the instrument as a whole. Different sections, amendments, or provisions relating to the same subject, must be construed together and read in the light of each other."

Noah Webster defines the noun "period" thus: "length of existence; duration."

In the case of People v. Leask, 67 N. Y. 521, l. c. 527, that Court said:

> "The word <u>period</u>, in its proper meaning, has reference to a lapse of time; and the statute in the use of it, had reference to a lapse of time, as measured by the measures of time in use among men. * * * A period of time is a stated and recurring interval of time, a round or series of years, by which time is measured. When the statute prescribed the term of office of the clerks to be, in general phrase, for the same period, it referred to the stated and recurring interval of time, to the round of series of years which it had already named, to wit, six years."

We believe that by taking the dictionary definition of the noun "period" as used in the Constitution, then the phrase should well read that the coroner "shall be eligible only four years in any length of existence." The three official constitutional terms provided for the coroner in the Constitution might continue for an indefinite period but for this limitation of eligibility, and this exigency was in the minds of the framers. Our construction eliminates a coroner from continuing in office indefinitely while occupying an official term. Armed with such power, it was not intended that he use his office to perpetuate himself in office but for a four year cycle of continuous time. Continuation in office beyond a four year cycle was thought not best for the welfare of the people, hence the constitutional limitation. On the other hand arbitrary retirement of a trained and efficient officer was thought not best for the welfare of the people. Hence the constitutional limitation, measured by a four year cycle of time was not intended to effect those persons whose term, or continuous successive terms did not run through a four year cycle of time. This constitutional provision is self-enforcing, and the happening of the constitutional limitation of eligibility automatically vacates the office, and for filling this vacancy in office, the people by their Constitution took forethought and provided the method and term.

Under Article IX, Section 11, supra, the County Court in all cases of vacancy in the office of coroner, must fill the vacancy and the appointed officer is to hold the office until the person elected in the next general election be

duly sworn and qualified. This section specifically provides that the person appointed by the County Court to fill a vacancy in the office of coroner is eligible for the next succeeding term, and by its very specifications we believe it to be an exceptional instance when the four years continuous cycle cannot operate as a limitation on eligibility to the office of coroner.

Under the provisions of Article XIV, Section 5, supra, we see that all constitutional officers hold their office "subject to the right of resignation", which provisions in the fundamental law abates the common law rule imposing public office on people.

CONCLUSION.

Applying our construction of the above quoted statutes and constitutional provisions to your particular problem, we see that your office of coroner of Texas County, Missouri, was filled pursuant to the general election of 1932, and that under the statutory and constitutional order of election the office of coroner will again be filled, pursuant to the general election to be held November 3, 1936.

Under the provisions of Article XIV, Section 5, supra, of the Missouri Constitution, you, as constitutional officer, are privileged to resign your office at will.

We are of the opinion that should you resign and the County Court of Record accept your resignation, we will believe that up until that time the office continues in you until that period of time that your successor is appointed to commence the unexpired term provided for in the Constitution, and he be commissioned and qualified as provided in Section 11196, supra.

We are of the opinion that nothing in the Constitution, Statutes, or common law prohibits you from succeeding yourself in the unexpired term, should the Court see fit to appoint you for this unexpired term. We are of the opinion that should you, as coroner, resign at this time of your term, and a successor be appointed for the unexpired term, other than yourself, in such a case you could run for the office again in the general election of November 3, 1936, and should you be elected you would be eligible to take over the office in the face of this constitutional provision,

providing that you are otherwise qualified for the office. With a term of vacancy filled by another, separating and intervening your present term from the contemplated term, it can not be said that you be holding the office of coroner for over four years continuously in any period of time.

To succeed yourself by filling the unexpired term, we believe that you would be ineligible to the office at the general election to be held November 3, 1936. Such a compliance with the exception of Article IX, Section 11, supra, allowing those appointed to succeed themselves was not intended by the people. Such a compliance is but a literal compliance and is contrary to the spirit of the Constitution. Such a compliance would be but a subterfuge adopted to defeat the will of the people who intended rotation and non-succession, rather than abide by their will.

Our construction affords rotation and non-succession in office, intended by the people, and at the same time does not eliminate a trained and efficient officer from public service, except as the people, by their election, so eliminate.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General.

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