

GOVERNOR: Upon a vacancy he shall appoint State Administrator of the Social Security Commission for a term of four years and not for the unexpired term of his predecessor.

October 3, 1941

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Honorable Forrest C. Donnell
Governor, State of Missouri
Jefferson City, Missouri

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Dear Governor Donnell:

In answer to your oral request of October 2, 1941, in reference to the appointment of the State Administrator under the Social Security Act, we are herein giving our opinion under the facts given to us as follows:

"On November 3, 1937, George I. Haworth was appointed Administrator of the Social Security Commission for a term ending July 1, 1941, and until his successor be duly appointed and qualified. Section 9400, R. S. Mo. 1939, provides that such appointment be made for four years. Mr. Haworth has tendered his resignation, and the question arises as to when the term of Mr. Haworth expires, and, in the event of an appointment, should it be for his unexpired term or for a period of four years?"

The Legislature saw fit in the enactment of the chapter upon social security in Section 9398, R. S. Missouri 1939, to put in the following clause, "* * Whenever any vacancy occurs, the Governor shall appoint a Commissioner for the remainder of such term. The Governor may at any time after notice and hearing remove any Commissioner for gross inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office. * * "

It is very noticeable in the above clause that it says "when any vacancy" which may mean resignation or death or any other vacancy which does not occur by reason of removal for cause. The language in the above clause is unambiguous, and since under this section it specifically sets out the term of each commissioner, ranging from one

to three years, in case of a vacancy the appointment must be for the unexpired term of each particular commission. The reason for such a procedure is so that the appointment of a commissioner, in case of a new appointment, would not change the entire commission at one time, and the reason for setting out that the appointment should be for the unexpired term is to keep the terms of the respective commissioners uniform.

In the case of *Smith v. Pettis County*, 136 S. W. (2d) 282, paragraphs 16-18, the court defined "term of office" as follows:

"* * * A 'term of office' uniformly designates a fixed and definite period of time. * * * * *"

Section 9400, R. S. Missouri 1939, provides as follows:

"The Governor, by and with the advice and consent of the Senate, shall appoint a State Administrator at an annual salary of not to exceed \$6,000.00 who shall be a person qualified by education and experience to supervise the administration of the work of the State Social Security Commission, and shall have been a citizen and taxpayer of Missouri for not less than ten years and shall hold office for a term of four years. The State Administrator shall, with the consent of the State Commission, appoint such officers, employees, and others as may be required herein for the administration of any law imposing duties upon the State Commission or deemed necessary by the State Commission, and shall fix their duties, title, expenses and compensation within the limits of Appropriation laws. The State Administrator shall serve as executive and administrative officer of the State Commission. He shall prepare and submit to the State Commission, for its

approval, an annual budget of all funds necessary to be expended by the State Commission. He shall prepare annually a full report of the administration of this or any other law, together with such recommendations and suggestions as he may deem advisable, and submit such report to the Governor. Each officer or appointee may be removed at any time by the appointing power in the same manner by which the appointment is required by law to be made. Members of the State Commission, the State Administrator and all officers appointed by the State Commission shall, before entering upon the duties of their office, take and subscribe an oath or affirmation, as required by the Constitution of Missouri. The State Commission may require a good and sufficient bond to be given by any officer or employee as the State Commission may designate in an amount and with sureties satisfactory to the State Commission, and in a form of bond approved by the Attorney General, conditioned upon the faithful discharge of the duties of the respective office or employment, and to account for all property and funds coming into their hands by, through and from such office or employment."

In this section of the statute it will be noted, first, the following words are used: The Governor, by and with the advice and consent of the Senate, shall appoint a State Administrator * * * " The section then further states, "The State Administrator shall, with the consent of the State Commission, appoint such officers, employees, * * * " The section then states, "* * each officer or appointee may be removed at any time by the appointing power in the same manner by which the appointment is required by law to be made. * * " So it seems that since the second quotation which applies to the State Administrator, with the consent of the State Commission, appointing such "officers," and under the first quotation of this section which

states the Governor shall appoint a State Administrator, and the third quotation states "each officer or appointee," it can only be said that this clause, which permits the removal of each officer or appointee, refers to the State Administrator, as well as the officers and employees appointed by the State Administrator.

There is no question but that the Governor may remove at any time any appointee whom he has appointed and in the same manner by which the appointment is required by law to be made.

Section 12826, R. S. Missouri 1939, provides as follows:

"The Governor shall have power and he is hereby authorized to remove from office, without assigning any other reason therefor, any appointive state official required by law to be appointed by the Governor, whenever in his opinion such removal is necessary for the betterment of the public service, but the Governor may, at his discretion, in any order of removal which he may make under authority of this act, assign additional and more specific reasons for such removal."

This section has not been passed upon by any of the appellate courts of this state but the language used in the section is plain and unambiguous. In reading the statutes together, such as Section 12826, supra, and that clause of Section 9400, supra, in reference to the removal of each officer or appointee, there is no question but that the Governor has the authority to remove at any time in the same manner by which the appointment is required by law to be made.

Under Section 12826, supra, the Governor may remove from office without assigning any other reason, any state official whom he has appointed, and all that is necessary is that in his own opinion such removal is necessary for the betterment of the public service. This section further permitted the Governor to give any other reason in addition to his own personal opinion in removing any officer whom he

has appointed. Section 12826, supra, was enacted to give the Governor the power as set out in Article V, Section 4 of the Constitution of Missouri, which provides as follows:

"The supreme executive power shall be vested in a chief magistrate, who shall be styled 'The Governor of the State of Missouri.'"

Under the above constitutional section the Supreme Court has held that it cannot interfere with the Governor's executive powers. State ex rel. v. Stone, 120 Mo. 428.

In construing Section 9400, supra, it is necessary to consider the intention of the Legislature. The Legislature, in Section 9400, Chapter 52 of the Social Security Act, did not place such a procedure in the appointment of the state administrator. There was nothing said or placed in this section which made it mandatory upon the Governor, in case of a vacancy, to appoint for the unexpired term. Also, they did not see fit to command the Governor to notify and have a hearing to remove the state administrator as was set out in the removal of the members of the commission of the Social Security Board. In fact, Section 9400, supra, specifically states, "* * Each officer or appointee may be removed at any time by the appointing power in the same manner by which the appointment is required by law to be made. * * " There is nothing in this section which requires or forbids the Governor to appoint for the unexpired term or for a period of four years as set out in said Section. There was no occasion for the term of office to be uniform as set out in Section 9398, supra, which refers to the appointment of the five commissioners.

Under Section 9400, supra, it is not necessary that the Governor give any reason for the removal of a state administrator at any time, and, after removal, this section provides that the Governor, with the advice and consent of the Senate, shall appoint the state administrator who shall be properly qualified for a term of four years. There is no question but that at this time the Governor may appoint a state administrator for a period of four years, and if he saw fit at the end of the term of office of George I. Haworth, he could remove his appointee and appoint another person for a term of four years.

In giving this opinion we have not overlooked the

case of *The State ex rel. Withers v. Stonestreet*, 99 Mo. 361, which was followed by the case of *State ex inf. v. Williams*, 222 Mo. 268. In both of these cases the section under construction provided that the Governor shall appoint and commission the successor for the remainder of the term of office as provided in the section. In the case of *The State ex rel. Withers v. Stonestreet*, 99 Mo. 361, l. c. 373, 374 and 375, the court said:

"This reasoning leads to this result: That the date of the appointment, first made by the governor for the office in question, initiated the official term of the first appointee, and that all subsequent appointments necessarily had reference to such initial period, and, so far as lawful, conformed thereto. This conclusion is well sustained by authority. *Attorney General ex rel. v. Love*, 39 N. J. L. 476, is decisive of this point. And the general rule is elsewhere recognized that when no time is mentioned in the law, from which the term shall commence, it must begin to run from the date of election. *State ex rel. v. Constable*, 7 Ohio, 7; *Marshall v. Harwood*, 5 Md. 423; *Hughes v. Buckingham*, 5 S. & M. 632.

"These last, though election cases, furnish a strong analogous support to the view already expressed, showing as they do, the urgent necessity felt of having some determinate period at which and from which official terms shall begin. The law favors uniformity, but uniformity cannot be obtained except by the establishment of an inflexible rule. And the course in the office of the executive in regard to appointment of the first appointee, the language of his commission, and the language of all subsequent commissions, except that of relator, fixing the beginning of such official term at June 18, biennially, as the period from which to reckon the duration of such term, affords a contemporaneous,

as well as a continuous, exposition of the meaning of the law, and of the intention of its makers, that is not without value in the present investigation. Such contemporaneous and continuous construction, in the absence of anything of a countervailing character, should be sufficient per se to settle the controversy on the point in hand adversely to the relator.

"Under statutory provisions substantially identical with those under discussion, it has been held that the true rule was to construe the word 'term' as designating consecutive periods of six years, following each other in regular order, the one commencing where the other ends, and treating the incumbent appointed in any such period as the incumbent in the particular term or period to which his appointment relates, his office expiring with the expiration of his term. People ex rel. v. McClare, 99 N. Y. 83, 93. The statute there was like section 5838, providing that the appointee should hold for a certain number of years and until his successor should be appointed and qualified, and also like section 5832, providing that in case of vacancy, an appointment should occur for the residue of the term.

"The ruling just mentioned is in entire conformity to the authorities and views heretofore cited and expressed as to the date of the commencement and the uniform duration of the successive terms of office of the different and successive appointees under the law now being discussed. And, upon the very face of section 5838 aforesaid, there appears a legislative command that the terms of office of each appointee is to last two years 'from the date of his appointment;' but the legislature was cognizant that appointments might fail to be made at

the proper time; that deaths, resignations, failure to accept, qualify, etc., might occur, and so made provision in section 5838, that an appointee should hold office not only for his official term of two years, but until his successor should be duly appointed and qualified. And section 5852 exhibits the same marks of legislative solicitude that uniformity should prevail as to the duration of the official term of the inspector; for that section makes special provision, in case of vacancy, that the governor, upon being informed thereof, 'shall appoint and commission his successor for the remainder of the term of office as therein provided.' What term of office? Evidently the term of two years mentioned in section 5838, beginning at the date of the original appointee's appointment."

As set out in the cases of *The State ex rel. Withers v. Stonestreet*, 99 Mo. 361, and *State ex inf. v. Williams*, 222 Mo. 268, the main question involved was the beginning of the date of the term and the expiration of the term, and the court held that although the Legislature did not set out the date, the fact that the Governor made the appointment made the legal date of the beginning and since the Legislature designated the length of the term, the Governor, by setting the beginning of the date thereby also set the date of the expiration of the term.

We merely mention the above two cases for the reason that the sections being construed contain the same term as provided in Section 9398, supra, in regard to the appointment of the five commissioners and Section 9400, supra, does not contain the terms and clause as set out in the case of *The State ex rel. Withers v. Stonestreet*, 99 Mo. 361, and *State ex inf. v. Williams*, 222 Mo. 268, and as set out in Section 9398, supra.

If it had been the intention of the Legislature to have the appointment be for the unexpired term, they would have put the same clause in Section 9400, supra, which refers to the appointment and removal of the state administrator, as they have put in Section 9398, supra, which refers to the appointment and removal of the five members of the commission.

Hon. Forrest C. Donnell

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CONCLUSION

In view of the above authorities it is the opinion of this department that the State Administrator, under the State Social Security Act, when appointed, shall be for a term of four years, and in case of a vacancy, the appointment of a State Administrator should not be for the unexpired term of his predecessor.

It is further the opinion of this department that the Governor may remove at any time any officer or appointee appointed by him in the same manner by which the appointment is required by law to be made.

Respectfully submitted

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