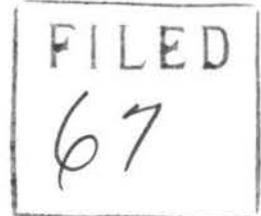


COUNTY SURVEYOR:

Vacancy filled by appointment
by Governor; appointee need not
be resident of county.

May 25, 1949

Hon. Albert D. Nipper
Prosecuting Attorney
Washington County
Potosi, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"My problem is as follows: In the last election our incumbent County Surveyor did not run. One, Mr. Edelman, did run and was elected but failed to qualify or desire to qualify. It was my opinion that the office would then be vacant and the then incumbent would hold over.

"Question: What is the proper procedure for the filling of this vacancy? Must there be a special election or does the Governor fill the vacancy? Must the appointee or candidate be a resident of this county? What is proper if there is none available in this county?"

We are enclosing herewith a copy of an opinion of this department dated September 24, 1948, in which it is held that a duly elected county surveyor holds over at the expiration of his term upon the failure of his successor to qualify. We are also enclosing a copy of an opinion dated February 18, 1949, holding that a vacancy is created in the office of coroner upon failure of the coroner-elect to give bond and that the incumbent coroner is entitled to hold over the office until the vacancy is filled.

As for the method of filling the vacancy in the case which you have presented, there is no express provision for filling vacancies in the office of county surveyor. Therefore, Section 11509, R. S. Mo. 1939, adopted pursuant to Section 4 of Article IV of the Constitution of 1945, is applicable. That section provides:

"Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any state or county office originally filled by election by the people, other than the office of lieutenant-governor, state senator, representative, sheriff or coroner, such vacancy shall be filled by appointment by the governor; and the person so appointed shall, after having duly qualified and entered upon the discharge of his duties under such appointment, continue in such office until the first Monday in January next following the first ensuing general election - at which said general election a person shall be elected to fill the unexpired portion of such term, or for the ensuing regular term, as the case may be, and shall enter upon the discharge of the duties of such office the first Monday in January next following said election: Provided, however, that when the term to be filled begins or shall begin on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold such office until such other date."

In view of this provision, the vacancy should be filled by appointment by the Governor.

As to the question of whether or not the applicant must be a resident of the county, the statute makes no such requirement. Section 13190, R. S. Mo. 1939, found in Laws of 1945, page 1759, provides merely for the election of "some suitable person as county surveyor." Nothing further is said regarding his qualifications.

The rule generally is that, in the absence of an express constitutional or statutory provision making residence within the district or political unit a condition of eligibility to hold office therein, such residence is not considered necessary. 42 Am. Jur., Public Officers, Section 45, page 914, Ann. 120 A.L.R. 672. In view of this rule, the only residence requirement would be that found in Section 8 of Article VII of the Constitution of 1945, to wit, residence in the state for one year next preceding the appointment.

Conclusion.

Therefore, it is the opinion of this department that a vacancy caused by the failure of the person elected to qualify in the office of county surveyor should be filled by appointment by the Governor and that the appointee need not be a resident of the county for which he is appointed, the only residence requirement being residence in this state for one year next preceding the appointment.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RRW:ml

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(Opinions enclosed rendered to Hon. R. M. Gifford, Prosecuting Attorney of Sullivan County, Sept. 24, 1948; Hon. Walter H. Toberman, Sec'y of State, Feb. 18, 1949.)