

COUNTY TREASURER:
ELECTION REQUIRE-
MENTS UPON A CHANGE
OF COUNTY CLASSI-
FICATION:

Notwithstanding the requirement in a class 2 county that a treasurer shall be elected in 1948 and every four years thereafter, the county treasurer in a class 2 county elected in 1954, when the county was a class 3 county, is entitled to hold office until the end of 1958 and until her successor is elected or appointed and qualified.



May 31, 1956

Honorable James S. Simrall, Jr.
Chairman
Clay County Board of Election Commissioners
National Commercial Bank Building
Liberty, Missouri

Dear Mr. Simrall:

Your recent request for an official opinion from this office was stated as follows:

"Mrs. Brooks, County Treasurer of Clay County, handed me the copy of the opinion dated April 27, 1948, directed to Virgil H. Black, the County Treasurer of Gallatin, Missouri, which you gave her at the meeting at Gladstone.

"After reading that opinion I still feel that we should have an opinion on the question of whether or not a County Treasurer should be elected this year for Clay County, it having been made a second class county since the election of Mrs. Brooks in 1954.

"Under Section 54.020, VA Mo. Statutes, 1949, it provides that counties of class 1 and 2 should elect a County Treasurer at the general election in 1948 and every four years thereafter. Mrs. Brooks, as above stated, was elected in 1954, and her commission as Treasurer was for a period of four years.

"In view of the question involved, I advised Mrs. Brooks to file before the closing of time for filing and have learned today that a candidate also filed on the Republican ticket. We would like to have an opinion on this question, and if necessary, I

Honorable James S. Simrall, Jr.

will be glad to have a request submitted to your office through Mr. Pratt, the Prosecuting Attorney in this county."

We enclose a copy of an opinion dated the eighteenth of February, 1954, to Honorable Walter H. Toberman, Secretary of State, which will be of great assistance in answering your questions.

The 1945 Constitution, Article VII, Section 12, states:

"Except as provided in this Constitution, and subject to the right of resignation, all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified."

The term for a county treasurer is four years; both in a class three county (Section 54.030) and in a class two county (54.020). Consequently, the change in classification did not change the length of the term. The incumbent elected in 1954 is entitled to hold the office for the full four years.

The question then arises: Who is entitled to the office when the present four year term expires? Certainly, there is no authority for an election in 1958 in a class two county. Under the constitutional authority, Article VII, Section 12, and Article IV, Section 4, which provides that:

"The governor shall fill all vacancies in public offices unless otherwise provided by law, and his appointees shall serve until their successors are duly elected or appointed and qualified,"
and

under the enabling statutes, Sections 105.030 and 54.020, the present incumbent will hold until the governor shall fill the office by appointment if a vacancy will occur at the end of this present four year term. We can find no law providing otherwise.

That we think a vacancy will occur, see the cases of State v. Clark, 87 Conn. 537; State v. Young, 68 So. 241, and Walsh v. People, 211 Pac. 646, cited on pages 4 and 5 of the above mentioned 1954 opinion. That we think Section 105.030 controls,

Honorable James S. Simrall, Jr.

and not 54.020 or 54.030, see the last two paragraphs before the conclusion of that opinion.

CONCLUSION

It is, consequently, our opinion that there can be no election of a county treasurer in Clay county in the year 1956; that the present incumbent will hold office until December 31, 1958, and until her successor is duly appointed and qualified between that date and the election of 1960.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours

John M. Dalton
Attorney General

RSN:lc

1 enclosure