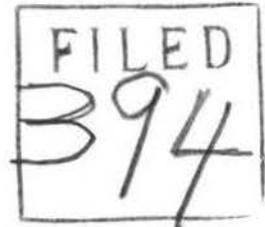


COUNTY AUDITOR:  
CREATION OF THE OFFICE IN SECOND  
CLASS COUNTIES:  
VACANCY:

The office of county auditor  
is created and vacant on January  
1, 1965, in St. Charles County.  
The Governor may fill the said  
vacancy.

Opinion No. 394

December 22, 1964



Honorable Omer J. Dames  
State Representative  
St. Charles County  
Route #3, Box 76  
O'Fallon, Missouri

Dear Mr. Dames:

This is in answer to your official opinion request regarding the creation of the office of county auditor in St. Charles County.

The question has been raised as to whether this office is created as of January 1, 1965, or the first Monday in January of 1965 in St. Charles County. In your letter you state that St. Charles County will become a second class county on January 1, 1965. Section 55.040 creates the office of county auditor in all second class counties.

Section 55.040 creating the office of county auditor in second class counties provides:

"The office of county auditor is hereby created in all counties of the second class in this state."

Section 55.050 relating to the term of office of the county auditor provides:

"At the general election in the year 1946, and every four years thereafter, a county auditor shall be elected in each county of the second class. He shall be commissioned by the governor and shall enter upon the discharge of his duties on the first Monday in January next ensuing his election. He shall hold his office for the term of four years and until his successor is duly

elected and qualified, unless he is sooner removed from office. \* \* \*"

The term of the various county auditors presently being served is from the first Monday of January 1963 to 1967.

Section 55.040, supra, creates the office of county auditor in second class counties and since St. Charles County becomes a second class county on January 1, 1965, the office of county auditor is thereby automatically created by authority of Section 55.040 on the same day the county becomes a second class county.

Section 55.050 relating to vacancy in the office of county auditor provides:

"\* \* \* if a vacancy occurs in the office by death, resignation, removal, refusal to act, or otherwise, the governor shall fill the vacancy by appointing some eligible person to the office, who shall discharge the duties thereof until the next general election, at which time an auditor shall be chosen for the remainder of the term, who shall hold his office until his successor is duly elected and qualified unless sooner removed."

The Governor may appoint the county auditor on or after the day that office is vacant which, in this case, is January 1, 1965, because that is the date upon which the office is created and becomes vacant.

#### CONCLUSION

It is the opinion of this office that the office of county auditor of St. Charles County will be created and become vacant on January 1, 1965, when St. Charles County becomes a county of the second class and at that time the Governor may appoint a county auditor to fill the vacancy.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Jim DeNeen.

Very truly yours,

*Thomas F. Eagleton*  
THOMAS F. EAGLETON  
Attorney General