

CIRCUIT COURT:
CIRCUIT CLERKS:
CIRCUIT COURT CLERKS AND
RECORDER OF DEEDS:
RECORDER OF DEEDS:
VACANCIES:

(1) During a vacancy in the office of the clerk of the circuit court and pending the appointment of a successor by the Governor and qualification of such officer, the circuit court may appoint a temporary circuit clerk; (2) Such an appoint-

ment where the offices of circuit clerk and recorder are combined, also constitutes the person appointed by the court ex officio recorder as a matter of law; (3) Such clerk appointed by the circuit judge is entitled to the emoluments of the office during the period he serves as circuit clerk and recorder of deeds; (4) The person appointed by the Governor to fill such a vacancy is not entitled to any emoluments of office until such time as he duly qualifies for such office.

OPINION NO. 23

November 6, 1969

Honorable Haskell Holman
Auditor of the State of Missouri
Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Holman:

This opinion is in response to your questions concerning the office of the circuit clerk of a county in which a vacancy was caused by death, to wit:

". . . the records reveal that the successor to the office of circuit clerk, and ex-officio recorder was appointed by the Governor on July 21, 1967, but did not take the oath of office until July 27, 1967.

"The questions arising as a result of the circuit court order [that upon the death of the elected official, the deputy circuit clerk and ex officio recorder of deeds remain in office until a successor is appointed] and the variance between the date of appointment and the date the appointee took the oath of office are as follows:

"1. Would the individual appointed as deputy circuit clerk and ex-officio recorder be authorized to act and entitled to receive compensation from the county during the period the office was vacant, namely July 3 to July 26, inclusive, 1967?

Honorable Haskell Holman

"2. Would the individual appointed to fill the vacancy be entitled to receive compensation beginning on the date of appointment, July 21, or beginning on the date that the oath of office was taken, July 27, 1967?"

Section 483.020, RSMo, provides for the filling of a vacancy created by the death of an elected circuit clerk in the following manner:

"When any vacancy shall occur in the office of any clerk of a court of record so elected, by death, resignation, removal, refusal to act or otherwise, it shall be the duty of the governor to fill such vacancy by appointing some eligible person to said office, . . . "

Although the statutory power to fill the vacancy is vested exclusively in the Governor, courts possess broad power to act in the interest of self-preservation. The Missouri Supreme Court, in the case of Pogue vs. Swink, 284 S.W.2d 868, 872 (1955), held:

". . . Even in the absence of specific statutes upon the subject, courts of general jurisdiction have the inherent power to do all things reasonably necessary to preserve their existence and function as a court. . . and have the power to appoint necessary attendants, including clerks and janitors. . . "

The intent of the order by the circuit judge was clearly to appoint a temporary clerk of his court so that the court's business should not be interrupted pending action by the Governor. It is our opinion that the order was sufficient to effect this intent and authorize the appointee to act as the clerk of the circuit court even though the language of the order speaks of continuing to act in the capacity of deputy circuit clerk.

The offices of circuit clerk and recorder have been combined in such county pursuant to Section 59.040, RSMo 1959. Accordingly the individual lawfully occupying the office of clerk also has the authority to act as ex-officio recorder of deeds. Thus, such a person is de jure circuit clerk and ex-officio recorder and entitled to the emoluments of the office until a successor is duly appointed or elected and qualified.

Finally, with regard to your question concerning whether or

Honorable Haskell Holman

not the individual appointed by the Governor to fill the vacancy would be entitled to receive compensation beginning on the date of the appointment, or beginning on the date that the oath of office was taken, it is our opinion that such individual is not duly qualified until he takes the oath of office; and therefore, he is not entitled to any emoluments of the office until he qualifies.

In this respect, we refer to you our Opinion No. 93, dated May 13, 1963, issued to the Honorable Joe R. Ellis, copy enclosed, in which we held that the statutory amount established for the office merely fixes the rate of pay per annum and does not entitle the holder of that office to a full year's pay when he serves less than a year.

In this instance the clerk who was duly appointed by the court held the office until the governor's appointee was duly appointed and qualified. Coates vs. Parthman, 334 S.W.2d 417 (1960); State vs. Brown, 274 S.W. 965, 220 Mo. App. 468 (1925). Therefore, it is clear that the appointee of the Governor is not entitled to any of the emoluments of the office until he qualifies, and that the oath of office is a condition to qualification under Section 483.035, RSMo 1959.

CONCLUSION

It is therefore the opinion of this office that:

- (1) During a vacancy in the office of the clerk of the circuit court and pending the appointment of a successor by the Governor and qualification of such officer, the circuit court may appoint a temporary circuit clerk;
- (2) Such an appointment where the offices of circuit clerk and recorder are combined also constitutes the person appointed by the court ex officio recorder as a matter of law;
- (3) Such clerk appointed by the circuit judge is entitled to the emoluments of the office during the period he serves as circuit clerk and recorder of deeds;
- (4) The person appointed by the Governor to fill such a vacancy is not entitled to any emoluments of office until such time as he duly qualifies for such office.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enc: Opinion No. 93
Ellis, 5/13/63