

COUNTY TREASURER:

In view of Section 12132a, Laws 1933, page 338, merging office of county treasurer and county collector in certain counties, where county treasurer before end of term runs for and is elected to office of county collector, he must resign as said treasurer when he qualifies and takes office as collector.



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Mr. E. C. Hutchison,
County Treasurer,
Vienna, Missouri.

Dear Mr. Hutchison:-

We have your letter of October 19, 1933, in which is contained a request for an opinion as follows:

"Relative to the merging of the County Treasurer, and Collectors office, at the expiration of the present treasurer term December 31, 1936, in case County Treasurer should run for the office of Collector in the year 1934, and receive the nomination and be elected at the General Election in November 1934, at what time would he have to resign the Treasurer's office to assume the duties of the Collector?"

Section 12132a, Laws of 1933, page 338, provides as follows:

"Sec. 12132a. COLLECTOR TO ACT AS TREASURER.- On and after the expiration of the term of office of the county treasurer on the 31st day of December, 1936, in all counties of this state which now or hereafter have a population of less than 40,000 inhabitants according to the last decennial United States census and not under township organization, the county collector shall take over all the duties now performed by the county treasurer and such collector shall be county collector and ex officio county treasurer and shall perform any and all duties now devolving upon the county collector and county treasurer. Such collector shall act as ex officio treasurer and perform the duties attached thereto with no additional remuneration other than such moneys as are allowed by law for his services as county collector, and he shall not be required to give any bond other than the bond given as county collector. All duties and obligations now imposed by law upon county treasurers in counties having a population of less than 40,000 inhabitants according to the last decennial United States census are hereby set over and made a part of the duties and obligations of the ex officio county treasurer as provided for in section 12132a."

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We construe the above section to mean that such law as is provided therein shall go into effect on December 31, 1936, and not before. It may be argued that the law is to come into effect on the happening of the contingency of the present county treasurer ending his personal term by death, resignation or otherwise, but we do not so regard the meaning. The limitation set by the date above mentioned must be considered since it is a well settled principle of law in this state that in construing a statute, effect must be given to every word, clause and sentence within such statute; and that no part shall be considered meaningless.

In the case of *Ex parte Andrews*, 18 S.W. (2nd), 580, the court at page 582 stated:

"The legislative intention is to be ascertained from the words used in a statute. Another rule of construction is that effect is to be given to every word, clause and sentence within a statute. *Hannibal Trust Co., Executor, vs. Elzea, et al.*, 315 Mo. 485, 286 S.W. 371."

Further, in the case of *Cook vs. Sears, Roebuck & Co.*, 51 S. W. (2nd) 134, the court at page 135 stated:

"In considering this statute as amended we are bound to give effect to all the provisions thereof and so to rule, if possible, that no part is destroyed or made meaningless by the construction of other parts. (*State ex rel vs. Offutt*, 223 Mo. A. 1172, 26 S. W. (2nd) 1.c. 831)," etc.

In view of the above, therefore, the offices of county treasurer and county collector are to be separate and distinct county offices until December 31, 1936.

Article II, Section 19, of the Constitution of Missouri provides as follows:

"That no person who is now or may hereafter become a collector or receiver of public money or assistant or deputy of such collector or receiver, shall be eligible to any office of trust or profit in the state of Missouri under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all the public money for which he may be accountable."

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The above section of the Constitution, of course, makes it impossible for a county treasurer under our present laws to go into office as county collector until he has resigned his office as county treasurer. The question as to when such resignation and accounting must take place now arises. The Supreme Court of Missouri sitting in Banc, all the judges concurring, has construed the word "eligible" in the above section to refer not to the time of election or appointment but to the time of the actual qualification and taking of office.

The decision above referred to was in the case of State ex inf. Major vs. Breuer, 235 Mo. 240, 138 S. W. 515. We quote the concurring opinion of Valliant, C. J., at page 250, which sustains the view above expressed:

"Valliant, C. J.- The word 'eligible' in reference to a candidate for a public office, is not always used by law-writers with the precise point in view that is presented by the learned counsel for the relator in this case, that is, whether it means eligible at the date of the election or appointment, or at the date of taking possession of the office. It may sometimes be used in reference to the one date and sometimes to the other and whether the reference is to the one or the other depends on the context and on the subject; in view of the context in which the word 'eligible' is used in section 19 of article 2 of the Constitution and of the particular subject to which it relates, I am satisfied that it refers to the date that the candidate is to take possession of the office.

"Therefore, I concur in the conclusion that the ouster should be denied. Lamm, Woodson, Graves, Ferriss and Brown, J. J., concur in this opinion."

We are therefore of the opinion that the county treasurer having been elected county collector need resign as county treasurer only on his actual qualification and taking of office as such county collector.

Very truly yours,

CHARLES M. HOWELL, Jr.,

Assistant Attorney-General.

Approved:

Attorney-General.