

OFFICERS:) Member of Board of Managers
ELEEMOSYNARY INSTITUTIONS:) appointed to fill vacancy serves only
until end of term.

October 21, 1941

Mr. Ira A. Jones
President, Board of Managers
State Eleemosynary Institutions
Jefferson City, Missouri



Dear Mr. Jones:

This Department is in receipt of your request for an official opinion, which reads as follows:

"When a member of the Board of Managers, State Eleemosynary Institutions, resigns or dies and someone is appointed in his place does the person appointed in his place hold for four years from the time of appointment or does he hold to the expiration date of the person to whose place he has been appointed?"

"We would like this information so that the expiration of term of office can be placed in the Blue Book."

Section 9259, R. S. Mo. 1939, provides that the state eleemosynary institutions shall be under the control of the Board of Managers consisting of six persons appointed by the governor.

Section 9260, R. S. Mo. 1939, provides as follows:

"Immediately after this law shall take effect the governor shall appoint two persons to serve for a term of one year, two persons to

serve for a term of two years, two persons to serve for a term of three years and at the expiration of the term of service of the members of the first board, the governor shall appoint successors to those members whose terms expire, who shall serve for a term of four years, and no two persons who shall have been appointed whose terms expire at the same time shall belong to the same political party."

Section 9262, R. S. No. 1939, reads:

"The governor shall have the power to remove for just cause any member or members of any board of managers, and to appoint others in the place of those removed, and to fill all vacancies that may occur in any such boards by death, resignation or refusal to act. If any member shall refuse to act on any board, or shall fail to attend two successive meetings of such board without a satisfactory reason for such failure, it shall be the duty of the governor to remove such member. All members appointed when the senate is not in session shall hold their offices for the unexpired term, subject to the approval of the senate at its first session after such appointment."

Under the provisions of Section 9260, supra, it will be seen that the Legislature has fixed the duration of the term but leaves the time when the term shall commence to the first appointing officer, which appointment had to be made "immediately" after the law took effect.

The general rule is stated in 46 C. J. 976, as follows:

"When the duration of the term is fixed, and also the beginning or ending, or both, a vacancy, if it occurs, is in the term of office as distinct

from being in the office itself, and an appointment to fill such vacancy can be only for the unexpired portion. This rule is particularly applied in the case of appointive offices where the beginning of the term of the first appointee determines the limits of the term of successive appointees, so that one appointed in the middle of the term, because of the vacation of an office during the term of an incumbent, or because of his holding over, is not appointed for longer than the unexpired term. * * *

What was said by our Supreme Court in *State ex rel. Rosenthal v. Smiley*, 304 Mo. 549, 263 S. W. 825, is, we believe, especially applicable to the question presented in your request. The court through Judge Magland said (l. c. 827):

"It will be observed that the statute prescribes only the length of the term of the office it creates; it contains no provisions as to when the term shall commence or when it shall end; nor does it contain any reference to unexpired terms or to the filling of vacancies. Under the rule of construction applicable to such a statute which has long obtained in this state it must be held that it was the legislative intent that the 'term' of the office should consist of consecutive periods of two years, following each other in regular order, the one commencing where the other ends, and that the initial term should commence on the date of the appointment first made by the county court. When the appointing power named the first incumbent, it thereby as effectually fixed the dates of the beginning and termination of the initial term of the office and of the subsequent terms as though they had been expressly prescribed by the Legislature. *State v.*

Williams, 222 Mo. 268, 121 S. W. 64,
17 Ann. Cas. 1006; State v. Stonestreet,
99 Mo. 361, 12 S. W. 895.

"When the duration of the term is fixed, and also the beginning or ending, or both, a vacancy, if it occurs, is in the term of office as distinct from being in the office itself, and an appointment to fill such vacancy can only be for the unexpired portion. This rule, which makes for uniformity, and is in consonance with the general intent of our Constitution and legislative enactments, has had the repeated sanction of this court. State v. Spitz, 127 Mo. 252, 29 S. W. 1011; State v. Williams and State v. Wilcox, supra. * *"

In the later case of State ex rel. Jones v. Smiley, 317 Mo. 1283, the rule in the Rosenthal case, quoted above, was approved, although the case was overruled upon another ground. However, in so far as the quotation cited above is concerned, it is still the law in this State.

Under the authority of the above quoted case, it will be seen that when the Governor appointed the members of the Board of Managers of the State Elee-mosynary Institutions in 1921, when said laws became effective (Laws of Missouri, 1921, p. 380), that the terms of the various members became set and definite and that any vacancy that occurs therein occurs in the term of office, and that a person appointed to fill such vacancy holds only until the end of the term of the person whose office he was appointed to fill.

Conclusion

It is, therefore, the opinion of this Department that the members of the Board of Managers of the State Elee-mosynary Institutions have definite and set terms of four

Mr. Ira A. Jones

-5-

Oct. 21, 1941

years and any appointment to fill a vacancy in such terms of office can only be for the unexpired portion of such terms and said appointment does not extend four years from the date of the appointment.

Respectfully submitted,

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APPROVED:

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