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Honorable Forrest C. Donnell
Governor of Missouri
Jefferson City, Missouri

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Dear Governor Donnell:

We acknowledge receipt of your letter requesting an opinion, which reads as follows:

"On February 4, 1938 Governor Lloyd C. Stark appointed James L. McQuie, Democrat, 229 North Kirkwood Road, Kirkwood, Missouri, as a member of the Board of Election Commissioners for the County of St. Louis, Missouri, for a term ending January 15th, 1942, and until his successor is duly appointed and qualified.

"On February 4, 1938 Governor Lloyd C. Stark appointed Herbert D. Condie, Republican, 40 North Elizabeth Avenue, Ferguson, Missouri, as a member of the Board of Election Commissioners for the County of St. Louis, Missouri, for a term ending January 15, 1942, and until his successor is duly appointed and qualified.

"Section 11928 of the Revised Statutes of Missouri of 1939, in reference to a board of election commissioners for counties having more than 200,000 inhabitants and less than 400,000 inhabitants, provides as follows:

'.... After this article shall become a law, the governor, by and with the advice and consent of the senate shall appoint for each of such counties four members of such board of election commissioners who shall hold their office until January 15, 1937, and until their successors are commissioned and qualified

"An opinion as soon as possible is respectfully requested on the following question:

"What should be specified in the Commission as the expiration of the term of each of the persons who shall be appointed to succeed respectively the above mentioned James L. McQuie and Herbert D. Condie?"

Section 11928 of Article 18, Chapter 76, R. S. Mo. 1939, provides in part:

"There is hereby created a board of election commissioners for each county governed by the provisions of this article composed of four members who shall be appointed as follows: After this article shall become a law, the governor, by and with the advice and consent of the senate shall appoint for each of such counties four members of such board of election commissioners who shall hold their office until January 15, 1937, and until their successors are commissioned and qualified. * * *"

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Said section further provides:

" * * * Successors shall be appointed in like manner and their terms of office shall be four years and until their successors are commissioned and qualified.
* * *"

Said section also contains the following proviso:

" * * * Provided, that nothing herein shall be construed as in any way interfering with or discontinuing the term of office of any person or persons now serving in any such counties as a member or members of the board of election commissioners until the term for which he or they shall have been appointed shall have expired. Such members now in office shall hereafter receive the salary and be required to perform the extra services herein provided for in this article."

Your question, as we understand it, is whether the successors of James L. McQuie and Herbert D. Condie should be appointed for a term expiring January 15, 1945, by reason of the above statutory provisions, or whether such successors' term should expire January 15, 1946, by reason of the fact that, according to the commission of McQuie and Condie, their term did not expire until January 15, 1942.

Section 11928, supra, was enacted by the General Assembly in 1935 (Laws of 1935, page 229). Prior to that time, counties now affected by Article 18, Chapter 76, R. S. Mo. 1939, were governed by Article 15, Chapter 61, R. S. Mo. 1929, which related to registration and elections in counties of 150,000 or more inhabitants. Section 10536 of said Article read in part:

" * * * After this article shall become a law, the governor, by and with the advice and consent of the senate shall appoint for each of such counties four members of such board of election commissioners who shall hold their offices until January 15, 1928, and until their successors are commissioned and qualified. Successors shall be appointed in like manner and their term of office shall be four years and until their successors are commissioned and qualified.
* * * "

The above section also contained a proviso identical with the proviso contained in Section 11928, supra, quoted above.

By virtue of Section 10536, R. S. Mo. 1929, supra, the term of office of members of the board of election commissioners appointed thereunder would not expire in the regular course of events until January 15, 1938, and, according to the proviso contained in Section 11928, R. S. Mo. 1939, supra, their term of office was not discontinued until the term for which they were appointed had expired; in other words, they continued to hold office under their original appointment. Said proviso, however, by its wording, only applied until the expiration of the terms of the commissioners appointed under Section 10536, R. S. Mo. 1929.

Since the proviso only applied until the terms of the commissioners theretofore appointed had expired, we must look to the body of Section 11928, supra, to ascertain the terms of the commissioners appointed after the effective date of said section. Said section provided that after the article became a law, the governor, by and with the advice and consent of the senate, was to appoint four members as a board of election commissioners in all counties to which the article was applicable, and provided further that they were to hold their office until January 15, 1937. Of course, by virtue of the proviso heretofore considered, which is merely an exception to the above provision fixing the term of office, members of the board of election commissioners already serving in such counties

were to continue to serve until the expiration of the term for which they were appointed, but said proviso did not make a different term for those appointed to succeed such commissioners. In other words, in our opinion, the term of the board of election commissioners first appointed under Article 18, supra, was to expire January 15, 1937, and, by the plain wording of the statute, their successors were to be appointed in like manner for a term of four years, and until their successors were commissioned and qualified.

In the case of *State ex inf. v. Williams*, 222 Mo. 268, the court, at l. c. 278, quoted with approval from the opinion of *State ex rel. v. Stonestreet*, 99 Mo. 361, as follows:

"Going to the standards of our language we find that a term means "the time for which anything lasts; any limited time; the term of life." (Webster's Dict.) And turning to the authorities, they announce that "the expression, term of office, uniformly designates a fixed and definite period of time." (Anderson's Law Dict. 1023; *People v. Brundage*, 78 N. Y. 403, 407; *Baker, Governor, v. Kirk*, 33 Ind. 517.) So that whether we take the phrase, "term of office," in its ordinary or popular sense, or in its technical import, it means one and the same thing: "A fixed and definite period of time."

"Of course, every such period of time, in order to be "fixed and definite," must have a point of beginning and a point of termination equally fixed and definite. Now, if it can be ascertained when the "term of office" of the first appointee of the Governor under the revision of 1879 began, it would seem not difficult to reach a correct conclusion as

to when the terms of office of the successive and subsequent appointees of the Executive began and ended."

The above case dealt with the term of office of an appointee where the statute did not fix the commencement of the term, and it was held that the term was fixed by the appointing power. The court, however, at l. c. 279, stated:

"* * * But if the Legislature, being possessed of the power, had fixed the date of the commencement of the first appointee's official term, it would not be questioned that such initial point, being once made sure and steadfast, would recur at every corresponding period of two years. This must be true, or else the premises from which this conclusion is drawn, sustained as it is by authority, that a "term of office uniformly designates a fixed and definite period of time," must be false. * * *"

Applying the above announced principles to the instant case, we see that the term of office of the members of the board of election commissioners, under the provisions of Section 11928, supra, first expired January 15, 1937, and their successors were to be appointed for a term of four years. The commissioners serving before the effective date of said section were to hold over until the expiration of their term, but a different term than the four-year term commencing on January 15, 1937, was not provided for their successors, and it is our opinion that their successors should have been appointed for a term expiring January 15, 1941, in order to have complied with the provisions of the statute fixing the commencement and necessarily the expiration of said terms. It is unbelievable, under the wording of the above section, that the legislature intended to have the terms of the various election commissioners of a county commence and expire at different dates, and undoubtedly the reason for changing the commencement date of said terms to the odd year was to have the appointments made while the legis-

lature was in session so that they could be submitted to it immediately without waiting a year for its approval.

In the case of State ex inf. v. Williams, supra, the court, at l. c. 280, said:

" * * * The law favors uniformity, but uniformity cannot be obtained except by the establishment of an inflexible rule. * * *"

And, further, it was said:

"Under statutory provisions substantially identical with these under discussion, it has been held that the true rule was to construe the word "term" as designating consecutive periods of six years, following each other in regular order, the one commencing where the other ends, and treating the incumbent appointed in any such period as the incumbent in the particular term or period to which his appointment relates, his office expiring with the expiration of his term. * * *"

CONCLUSION

In view of all of the above, it is the opinion of this department that the term of a member of the board of election commissioners of a county containing 200,000 to 400,000 population is a four-year term, which term originally commenced January 15, 1937, and expires every four years thereafter; that the commissioners serving in 1935, when Section 11928, supra, was adopted, held over until the expiration of their term, but that their successors should have been appointed for the term fixed by statute

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and ending January 15, 1941. It is, therefore, our opinion that the persons appointed to succeed James L. McQuie and Herbert D. Condie should be appointed for a term expiring January 15, 1945.

Respectfully submitted

JOHN E. TAYLOR
Assistant Attorney General

APPROVED:

ROY McINTIRICK
Attorney General

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