

COUNTY Induction into the army under Selective
ASSESSOR: Service Act does not create a vacancy.

December 19, 1942

Honorable Forrest C. Donnell
Governor of Missouri
State Capitol Building
Jefferson City, Missouri

12-22

FILED
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Dear Governor Donnell:

Under date of November 23, 1942, you wrote this office requesting an opinion as follows:

"Information has been received by me to the effect that the County Assessor of Ripley County, Missouri, has been drafted into the armed forces of the United States. It is my understanding that the work of the County Assessor is now being performed by a deputy assessor or by deputy assessors. Your opinion is respectfully requested on the following question:

"Should the Governor appoint a person as County Assessor of Ripley County, Missouri?"

At the time this request was received, attention was called to the case of State ex inf. McKittrick vs. Wade Wilson, which had been filed as a test case for the purpose of securing a decision from the Supreme Court upon the question of whether induction into the army under the Selective Service Act creates a vacancy in office. It was suggested that during the pendency of that case it was felt it would be improper for this office to express an opinion upon the question. The Supreme Court rendered its decision on Monday, December seventh. No motion for rehearing has been filed and the time in which

motion for rehearing could have been filed has expired so the decision is now final.

The Wilson case, supra, is a case involving the office of Clerk of the Circuit Court and statutes relating to that office. The statutes relating to the office of county assessor are not the same ones that are applicable to the Clerk of the Circuit Court but it is believed the principle announced in the Wilson case would be applicable in considering the statutes pertaining to the office of county assessor, which case holds that induction into the army did not create a vacancy or cause an automatic forfeiture of the office. The following brief quotation is from the Wilson case:

"The question for decision is whether Wall's induction into the army under the Selective Service Act resulting in his inability personally to perform the duties of his office caused him automatically to forfeit his office.

"It is our judgment that Wall did not forfeit his office by being drafted into the military service of his country. This would be equally true if he had volunteered for the duration, particularly in view of our universal military service."

By the provisions of Section 10946, Article 2, Chapter 74, Revised Statutes of Missouri, 1939, a county assessor has authority to appoint as many deputies as he may find necessary:

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" * * * * * and every assessor may appoint as many deputies as he may find necessary, to be paid for out of the fees allowed to such assessor, for whose official acts he shall be responsible, and who shall take the same oath and have the same power and authority as the assessor himself, while employed as such deputy or deputies."

By reason of this statutory authority for the appointment of deputies the duties of the office can be performed by someone lawfully authorized to do so, and business of the county and the public will not suffer.

CONCLUSION

It is, therefore our conclusion the Governor should not appoint a person as county assessor of Ripley County.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKEITHRICK
Attorney-General

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