

OFFICERS: ELECTIONS: Present incumbents in townships hold over for another term when no election was held.

April 15, 1943



Honorable Maurice W. Covert
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Sir:

We are in receipt of your request for an opinion, under date of April 13, 1943, which reads as follows:

"Texas County has adopted the township organization law as provided in Chapter 101 of the Statutes and is now operating under township organization. One of the Townships in this County, Roubidoux, failed and neglected to hold a Township Election as is provided in Article 4 of the Chapter on township organization. Now the question has arisen as to the legality of the old board to continue in office for another term or if the offices are vacant the question as to who has the right to fill the vacancies. Ordinarily vacancies in all offices in the township except Justices of the Peace are to be filled by appointment by the Township Board, but in this instance there is a question in my mind as to whether the township has a legal township board. If not then the law seems to be silent as to whether or not the old officers hold over until the successors are elected and qualified or whether the County Court would have a right to appoint officers or whether the township could now, at this late date and irregular time, hold a township election. The way the

matter now stands all actions of the township board and of each and every township officer would be subject to attack on the grounds that the officer or officers performing such official acts were not legal officers. I would appreciate an opinion from your department on the above matter."

Article 1, Chapter 101 and Section 13944 of Article 4, of the Revised Statutes of Missouri, 1939, provides that the election of the township officers in counties under township organization should have been held on March 23, 1943.

Section 13945 R. S. Missouri, 1939, reads as follows:

"There shall be chosen at the biennial election in each township one trustee, who shall be ex officio treasurer of the township, one township collector, and one township clerk, who shall be ex officio township assessor, one constable, two members of the board, and two justices of the peace: Provided, the same persons may be elected members of the board and justices of the peace, at the same election, and hold both offices; also the same person may be elected constable and collector at the same election and hold both offices at the same time, by taking the proper oath of each office and giving the bond required by law."

Under this section one trustee and two members of the board are chosen at the biennial election. They compose the board of directors as set out under Section 13976 R. S. Missouri, 1939.

Section 13960 R. S. Missouri, 1939, partially reads as follows:

" * * * * Township officers shall hold their offices for two years, and until their successors are chosen or appointed and qualified."

The above section complies with Section 5, Article XIV of the Constitution of Missouri, which reads as follows:

"In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."

In construing Section 5, Article XIV of the Constitution, the Supreme Court of this State, in the case of Langston v. Howell County, 79 S. W. (2d) 99, pars. 3,4, said:

"Our Constitution (section 5, art. 14) provides that: 'In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified,' and section 11196 R. S. 1929 (section 9168, R. S. 1919), Mo. St. Ann. Section 11196, p. 6141, reads: 'All officers elected or appointed by the authority of the laws of this state shall hold their offices until their successors are elected or appointed, commissioned and qualified.' We find no constitutional or statutory provision which either expressly or by implication excludes the county highway engineer, or the office of county highway engineer, from the operation and effect of the foregoing constitutional and statutory rule so that since there is no 'contrary provision' the rule so prescribed must be applied. It is said in 46 C. J. p. 968: 'The general trend of decisions in this country is that, in the absence of an express or implied constitutional or statutory provision to the contrary an officer is entitled to hold his office until his successor is appoint-

ed or chosen and has qualified.' Langston's official term was fixed at one year, but upon the expiration thereof, no successor having been appointed, his right to hold such office, and his title thereto, continued until the right of a duly appointed and qualified successor attached. His right to hold over and his continuance in the office was of course contingent and defeasible subject to be terminated at any time by the appointment and qualification of his successor. During the time an officer so holds over, under the provisions of the constitutional and statutory provisions, supra, he holds the office as a de jure officer (46 C. J. p. 969) and by the same tenure, after the prescribed term, until the right of his duly chosen and qualified successor attaches. It therefore appears that the trial court was in error as to the applicable rule of law, and in holding that Langston was not entitled to hold over and continue in office after the expiration of the term prescribed by the order of appointment."

We find no statutory provision which would prevent the board of directors of a township from holding over. In view of the holding in the case of Langston v. Howell County, supra, it is the settled law in this State that where there is no contrary provision as to the term of office or number of terms of office, the officeholder holds office during his official term and until his successor shall be duly elected, or appointed, and qualified.

Also, in the case of State v. Brown, 274 S. W. 965, par. 1, the court said:

"The law is well settled that, where a public officer is elected or appointed to hold office for a definite

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period, and until his successor is appointed or elected and qualified, failure to appoint or elect a successor at the end of such period does not work a vacancy. State ex rel Lusk, 18 Mo. 333; State ex rel. Stevenson v. Smith, 87 Mo. 158. It follows that the incumbent properly holds until his successor is elected or appointed and qualified, and it is then only that his term expires. State ex rel. Robinson v. Thompson, 38 Mo. 192; State ex rel. v. Ranson, 73 Mo. 78."

Under the above holding the same law applies in the case of an election or an appointment.

Since Section 13944 R. S. Missouri, 1939, sets the time of the election, and there is no provision for a special election at any other time, the election can only be held at the time specified. That an election must be held on the date set out by statute was held in the cases of State ex rel Baker v. Fiala, 47 Mo. 310; State ex rel McHenry v. Jenkins, 43 Mo. 26; State ex inf. v. Lund, 167 Mo. 228, l. c. 234; State ex inf. Smelt, 152 Mo. 512, l. c. 517; and State ex inf. Attorney General v. Dobbs, 182 Mo. 359.

CONCLUSION

It is, therefore, the opinion of this department that even though one of the townships in Texas County, which is under township organization, neglected to hold an election for the election of the township board, the present incumbents hold over for another term until the next election of township officers.

It is further the opinion of this department that even though no election had been held that there is no vacancy to be filled, either by the county court or by any board of directors of other officers who are appointed by the township board.

Respectfully submitted

APPROVED BY:

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