

TAXATION: Appointee holds until the successor  
qualifies. Penalties should not be  
COUNTY COLLECTOR: charged when payment of taxes cannot  
be made.

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March 23, 1943

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St. Joseph, Missouri



Dear Sir:

The Attorney General acknowledges receipt of your request for an official opinion, dated March 17, 1943, in reference to the status of the present county collector of Buchanan County. Your request consists of two questions:

I

Your first question reads as follows:

"Under the foregoing circumstances we should like your opinion as to whether there is any legal necessity for Mr. Van Andle to be re-appointed, and to furnish a new bond, to cover the term beginning March 1, 1943, or whether Mr. Van Andle's appointment made in January, and the bond which he then gave, are sufficient to authorize him to continue to serve as County Collector until the next general election and until the one then elected as collector has qualified according to the statutes."

Section 11055 R. S. Missouri, 1939, reads as follows:

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"The offices of sheriff and collector shall be distinct and separate offices in all the counties of this state, and at the general election in 1906, and every four years thereafter, a collector, to be styled the collector of the revenue, shall be elected in all the counties of this state, who shall hold their office for four years and until their successors are duly elected and qualified: Provided, that nothing herein contained shall be so construed as to prevent the same person from holding both offices of sheriff and collector."

Under the above section it will be noticed that the county collector, when elected, holds his office for four years, and until his successor is duly elected and qualified.

Section 11056 R. S. Missouri, 1939, partially reads as follows:

"Every collector of the revenue in the various counties in this state, and the collector of the revenue in the city of St. Louis, before entering upon the duties of his office, shall give bond and security to the state, to the satisfaction of the county courts, and, in the city of St. Louis, to the satisfaction of the mayor of said city, in a sum equal to the largest total collections made during any one month of the year preceding his election or appointment, plus ten per cent, of said amount: \* \* \* \* \*

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Section 11509 R. S. Missouri, 1939, reads as follows:

"Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any state or county office originally filled by election by the people, other than the office of lieutenant-governor, state senator, representative, sheriff or coroner, such vacancy shall be filled by appointment by the governor; and the person so appointed shall, after having duly qualified and entered upon the discharge of his duties under such appointment, continue in such office until the first Monday in January next following the first ensuing general election--at which said general election a person shall be elected to fill the unexpired portion of such term, or for the ensuing regular term, as the case may be, and shall enter upon the discharge of the duties of such office the first Monday in January next following said election: Provided, however, that when the term to be filled begins or shall begin on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold such office until such other date."

Under the above section the governor appoints, whenever there is a vacancy in the office of county collector, and the appointee continues in office until the first day of March next following the first ensuing general election, at which said general election a person shall be elected to fill the unexpired portion of such term. The reason why the date is different than in the body of the section is by reason of the proviso in the section.

Under the above quoted portion of Section 11056, supra, it is necessary that the collector should give bond before entering upon the duties of his office. The giving of the

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bond is part of his qualification.

Section 11073 R. S. Missouri, 1939, partially reads as follows:

"The terms for which collectors are elected shall expire on the first Monday in March of the year in which they are required to make their last final settlement for the tax book which was to be collected by them. \* \* \* \* \*"

Under the above partial section the term of a county collector terminates on the first Monday in March, in the last year of their term. The appointment of the present collector of Buchanan County began, according to your request, on January 23, 1943, which was after the election of Jim Wells, the former county collector who was elected in November of 1942, and who resigned from his office on January 16, 1943. It has been held that the office of the county collector expires on the first Monday in March during the last year of his term, and not on December 31, as most officers' terms expire. (State ex rel v. Herring, 208 Mo. 708, 106 S. W. 984.)

Your inquiry is whether or not a new appointment should be made after March 1, 1943, at which time the first term of the former county collector expired. You also ask whether or not a new bond should be given to cover the duties and qualifications of the new term beginning March 1, 1943.

Since Section 11055, supra, provides that the county collector should hold office until his successor is duly elected and qualified, the appointee holds office until the electee of the November election qualifies.

Section 5, of Article XIV of the Constitution of Missouri, reads as follows:

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"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."

By reason of the above section of the Constitution the legislature enacted Section 12820 R. S. Missouri, 1939, which reads as follows:

"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."

Under the above section an appointed officer holds his office until his successor is elected or appointed, commissioned and qualified. That the appointed, or elected officer holds office until the successor is duly elected, or appointed, commissioned and qualified, was held in the case of Langston v. Howell County, 79 S. W. (2d) 99, pars. 3-4, and State v. Brown, 274 S. W. 965, par. 1.

Also, in your first question you ask whether it is necessary to furnish a new bond to cover the term beginning March 1, 1943, and whether or not the bond given when first appointed is sufficient to authorize him to serve as county collector until the next general election, until the one elected has qualified according to the statutes.

The facts set out in your request result in a very peculiar situation, for the reason that the resignation of Jim Wells, which was given on January 16, 1943, after his election for the new term in November, (which term began on March 1, 1943), and the resignation was not specific enough to state the present term and the term beginning March 1, 1943. In any event, according to the authorities above set out the present appointee

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holds office until Jim Wells, who was elected for a term beginning March 1, 1943, qualifies.

We find no statute which limits the time in which he shall furnish bond as is set out for the qualification of the county treasurer.

As to the bond given by the new appointee, it is a question of fact as to the form of the bond. If the bond merely is for the term ending March 1, 1943, a new bond should be given, but, if the bond is for the full term that he is holding the office as county collector, a new bond is not necessary, for the reason that he holds office until his successor is elected, appointed and qualified.

#### CONCLUSION

It is, therefore, the opinion of this department that at this time there is no legal necessity for Mr. Van Andle to be re-appointed as county collector to cover the term beginning March 1, 1943.

It is further the opinion of this department, that if Jim Wells, the former county collector, who resigned his office on January 16, 1943, qualifies at any time between now and March 1, 1947, he will assume office as county collector. We would suggest, however, that if Jim Wells intends to abandon the office of county collector that he give another resignation in the nature of a refusal to qualify for the office, so that a successor can be elected at the next general election which will be held in November, 1944.

II

Your second question reads as follows:

"There is one more question on which we should like your opinion. After Mr. Well's resignation, the County Clerk took possession of the tax books for the purpose of making an abstract of the unpaid taxes, as provided by law. That work is continuing, and will not be completed until some time after April 1, 1943 - probably during the first week in April. The only work Mr. Van Andle is handling now is the collection of State Income Tax.

"Assuming that the abstract of unpaid taxes will be completed and the tax books turned over to Mr. Van Andle on April 1, 1943, what penalties and interest should be collected by Mr. Van Andle during April on taxes for 1942 or prior years which were delinquent on January 1, 1943? Is the answer any different if the books are not turned over until after April 1, 1943, so that the tax payers do not have a full month in which to pay? If the delinquent taxes are not paid in April, then what rate of interest or penalty should be charged on them in May and ensuing months?

"In other words, assuming that penalties should not be charged for the period during which the office was not accepting tax payments, are such penalties permanently waived, so that they are not collectible at any time during the year, or do they attach if payment is not made during April, for instance? Would the interest and penalties to be collected in May, 1943, be the same that would have been collectible in the absence of a shut down in the office; or should the penalties that normally would have accrued because of non-payment during January, February, and March be left out of

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consideration at all times hereafter when calculating the total amount to be collected?"

In answer to your second question we are enclosing a copy of an opinion rendered by this office on January 7, 1943, to Miss Hazel Palmer, County Collector, Pettis County, Sedalia, Missouri, in which we held that penalties and interest on taxes may not be charged in cases where the taxpayer was unable to pay the taxes before they became delinquent, on account of the death of the collector. This opinion is based upon Section 11075 R. S. Missouri, 1939, which not only mentions the death, but also the resignation, removal or other disability of any county collector, during the time the tax books are in his hands. Under the facts in your request, the only difference is that Jim Wells has resigned. In the enclosed opinion the county collector died. Under the holding in the cases cited in the opinion enclosed, and under the rules set out by Corpus Juris, a penalty should not be imposed for the non-payment of taxes, where it was impossible for the taxpayer to pay his taxes. In your request you ask, "Would the interest and penalties to be collected in May, 1943, be the same that would have been collectible in the absence of a shut down in the office; or should the penalties that normally would have accrued because of non-payment during January, February, and March be left out of consideration at all times hereafter when calculating the total amount to be collected?"

You state that Jim Wells, the county collector, resigned from his office on January 16, 1943. A penalty of one per cent had been added at that time which should be collected when the books of the county collector have been returned to him for the payment and receipt of delinquent taxes, but, under the enclosed opinion, we do not believe that the taxpayer should be compelled to pay the penalties for the months of February and March, and such months should be left out of consideration at all times hereafter when calculating the total amount to be collected. However, to protect the present county collector, and in view of the fact that he may be sued upon his bond as set out under Section 11124 R. S. Missouri, 1939, where he is charged with taxes, penal-

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ties and interest shown on the record of the list of delinquent lands and lots, we think that a test suit should be filed under the facts set out in the second party of your request. We find no decision on this matter, except the authority set out in the enclosed opinion.

CONCLUSION

It is, therefore, the opinion of this department that penalties should not be charged for the period during which the office was not accepting tax payments, and such penalties should be permanently waived and left out of consideration at all times hereafter when calculating the total amount to be collected.

It is further the opinion of this department, that since the one per cent penalty had accrued January 1, 1943, and Jim Wells, the county collector, resigned from his office on January 16, 1943, the one per cent should be collected and calculated for the month of January, 1943.

It is further the opinion of this department, that if the books are turned over to the present county collector, during the month of April, and the taxpayers do not have a full month in which to pay the taxes that month, the one per cent penalty, nevertheless, should be assessed and collected for that month, and for ensuing months, at the rate of interest set out in Section 11124 R. S. Missouri, 1939.

Respectfully submitted

W. J. BURKE  
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APPROVED BY:

ROY MCKITTRICK  
Attorney General of Missouri

WJB:RW