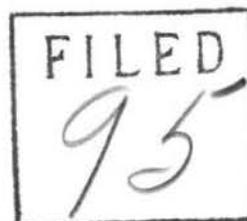


JUSTICES OF THE PEACE: On failure of successful candidate
for office of Justice of the Peace
DURATION OF OFFICE: to secure his commission and take
oath of office in qualifying himself
to hold office, the then present
incumbent of such office continues
to hold the office until his successor
is elected and qualified.

March 1, 1944

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Honorable Wm. H. Wessel
Prosecuting Attorney
Gasconade County
Hermann, Missouri

Dear Sir:

This office is in receipt of your letter of February 28th, addressed to Honorable Roy McKittrick, Attorney General, and, omitting caption and date, is as follows:

"I should like an opinion at your earliest possible convenience upon the following question:

"Mr. Ferdinand Pohlmann was serving as the only Justice of the Peace in Boulware Township, Gasconade County, whose term expired December 31, 1942. Two other men were elected in 1942, but only one qualified. Is Mr. Pohlmann a legally qualified Justice yet inasmuch as one of the newly elected men did not qualify?"

Replying to your inquiry, we assume that the two men who were elected in 1942 were candidates for Justice of the Peace in Boulware Township, Gasconade County in the 1942 election. We assume also, that one of the men who made the campaign was duly elected, qualified and was duly inducted into the office of Justice of the Peace within and for Boulware Township, Gasconade County, Missouri; and that the other gentleman, who was also elected, as you state, to the office of Justice of the Peace within and for Boulware Township, Gasconade County, Missouri, did not and has not qualified for such office.

So, the situation respecting the Justices of the Peace within and for Boulware Township seems to be that one gentleman making the campaign in 1942 for the office, after election, duly certified according to law, and having qualified in all things essential to the induction into office, as you say he has, is now legally elected, qualified and an acting Justice of the Peace of said township. But the other gentleman who made the campaign in 1942 for the office of Justice of the Peace, after having been duly elected has failed to qualify for such office.

We next have to determine the official status of Mr. Ferdinand Pohlmann, the present Justice of the Peace, who was, you say, the only Justice of the Peace in said Township previous to the election of the gentleman who was duly elected and qualified in the year 1942. You do not disclose the name of this gentleman.

Under the law of the State of Missouri as affecting the duration of the office of a justice of the peace, we cite you to the following authorities:

Section 37, Article VI of the Constitution of Missouri, provides as follows:

"In each county there shall be appointed, or elected, as many justices of the peace as the public good may require, whose powers, duties and duration in office shall be regulated by law."

And, Section 2525, R. S. Mo. 1939, provides:

"Justices of the peace, as herein provided for, shall be elected at the general election to be held in eighteen hundred and eighty-two, and shall hold their offices for four years, or until their successors are elected, commissioned and qualified; but every justice of the peace now in office shall continue to act as such until the expiration of his commission, and until his successor is elected and qualified."

Assuming that Justice Ferdinand Pohlmann was legally elected to the office of Justice of the Peace of Boulware Township, under the provisions of the Constitution and the Statutes of Missouri, and having been duly qualified under his commission and oath of office, and no successor having been elected and qualified under official commission and oath of office for lawful induction into such office of Justice of the Peace, then, in such situation, Justice Pohlman continues in office until his successor is elected and qualified.

We cite the following authorities in support of this conclusion:

Knight v. Mersman, 66 Mo. App. 219; Gage v. Vail, 73 Mo. 454; Fleming v. Mulhall, 9 Mo. App. 71; State ex inf. Dabbs, 182 Mo. 359; State ex inf. Crow, Attorney-General, v. Smith, 152 Mo. 512; Section 37, Article VI, Mo. Constitution; Section 2525, R. S. Mo. 1939, supra, and Section 2527, R. S. Mo. 1939.

CONCLUSION

It is, therefore, the opinion of this department that Ferdinand Pohlmann, the present duly elected and acting Justice of the Peace of Boulware Township, holds office until his successor is duly elected and qualified.

Respectfully submitted,

E. B. WOOLFOLK
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

EBW:CP