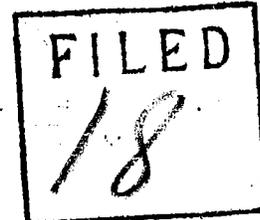


ELECTIONS; CONSTITUTIONAL LAW:
OFFICERS: ASSESSOR:

RE: The assessor of St. Francois County who was appointed to fill the vacancy in the office does not hold office for the entire term but only until the beginning of the term after the next general election.

July 13, 1946



Mr. W. E. Coffey
Prosecuting Attorney
Farmington, Missouri

Dear Mr. Coffey:

We acknowledge receipt of your letter of recent date requesting an opinion of this department as follows:

"J. A. Wampler was elected to the office of Assessor of St. Francois County, Missouri, at the General Election 1944, succeeding himself in office, and entered upon his new duties January 1, 1945. He died in August, 1945, and C. A. Doubet was appointed by the Governor to fill the vacancy on August 24, 1945.

"The new Constitution (including Schedules 2 and 3) became effective March 27, 1945.

"The Governor approved House Bill No. 469 on December 5, 1945.

"My point of inquiry is whether or not an election to the office of Assessor in St. Francois County, under existing law, will be necessary at the General Election of 1946, or as otherwise stated, does the term of Mr. C. A. Doubet end in 1946 or will it end in September, 1949, and whether the Clerk of the County Court should place his name upon the ballot for re-election at the General Election of 1946."

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

"Section 11509. Vacancies, how filled

"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."

The legal question involved is whether the provision of the Constitution of Missouri and House Bill No. 469, passed by the 63rd General Assembly and approved by the Governor, invalidates the provisions of the above quoted section.

Section 11509, supra, was held constitutional in State ex rel. Wayland v. Herring, 106 S. W. 984, 208 Mo. 708. The court in that case specifically considered Section 11, Article V of the Constitution of 1875 dealing with the terms of appointees appointed by the Governor to fill vacancies in public offices where the filling of vacancies was not otherwise provided for by law. This constitutional provision read as follows:

"Sec. 11. Vacancies in office--Governor may fill

"When any office shall become vacant, the Governor, unless otherwise provided by law, shall appoint a person to fill such vacancy, who shall continue in office until a successor shall have been duly elected or appointed and qualified according to law."

The provision of Section 4, Article IV of the Constitution of 1945 relating to this subject is substantially the same as the provision of Section 11, Article V of the Constitution of 1875. Section 4, Article IV reads as follows:

"Power of Appointment to Fill Vacancies--
Tenure of Appointees.--The governor shall
fill all vacancies in public offices unless
otherwise provided by law, and his appointees
shall serve until their successors are duly
elected or appointed and qualified."

The Constitution of 1875 carried a section, Section 5, Article XIV, which, in substance, is the same as section 12 of Article VII of the Constitution of 1945, and reads as follows:

"Sec. 5. Tenure of office

"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."

Thus, with relation to the question before us, the provisions of the Constitution of 1945 are the same in substance as the provisions of the Constitution of 1875, which was in force at the time the case of State ex rel. Wayland v. Herring, supra, was decided. Since the court, in the Herring case, held Section 11509, supra, constitutional, it follows that Section 11509, supra, is not in conflict with the Constitution of 1945 and is therefore still constitutional.

Section 2 of the Schedule of the Constitution of 1945 provides, in part, as follows:

"Sec. 2. Effect on Existing Laws.-- All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly.* * *"

Since Section 11509, supra, is consistent with the provisions of the new Constitution, it remains in force, under Section 2 of the schedule, until amended or repealed by the General Assembly. It has not, to date, been amended or repealed and is, therefore, still in full force and effect and must be controlling in the matter presented for our determination. Section 2, page 1 of House Bill No. 469 reads as follows:

"Section 2. At the general election in the year 1948 and every four years thereafter the qualified voters in each county in this state, except those under township organizations, shall elect a county assessor. Such county assessors shall enter upon the discharge of their duties on the first day of September next after their election and shall hold office for a term of four years, and until their successors are elected and qualified, unless sooner removed from office: Provided, that this section shall not apply to the City of St. Louis."

This section does not affect the application of Section 11509, supra, to the question. In State ex rel. Bothwell v. Green (1944) 180 S. W. (2d) 12, 352 Mo. 801, the Supreme Court of Missouri had before it a question which was the same in principle as that here presented. In that case the county collector of Pettis County was reelected for a term to begin on March 1, 1943. He died on December 25, 1942, and the Governor then appointed one, Hazel Palmer, to fill the vacancy created by his death. The court held that Hazel Palmer did not hold the office for the full regular term of four years from March 1, 1943, but only until March 1st, after the next succeeding general election. The court quoted Section 11055, R. S. Mo. 1939, which provided that the collectors should "hold their office for four years and until their successors are duly elected and qualified". It will be observed that this is the same provision as is found in Section 2 of House Bill No. 469, except for the word "duly". The court also quoted Section 11509, supra, as being the general statute on filling vacancies, and said at l. c. 806:

"We must read in conjunction with the statute on collectors the general statute on filling vacancies. * * *"

The court further said at l.c. 806 and 807:

"* * *Clearly in this case the office became vacant upon the incumbent's death and Section 11509 furnished the authority to fill the vacancy and the conditions on which it was to be filled.

"Applying the provisions of Section 11509 to this case we find: a vacancy occurred upon the death of Greer; the vacancy was filled by the appointment of Hazel Palmer; her term under the appointment expires at the day designated for the beginning of the term, that is March 1, after the first ensuing general election, namely the general election to be held in November, 1944; and her successor should be elected to serve the remainder of the term at the general election in November, 1944."

There being no question, therefore, that Section 11509, supra, is still in full force and effect, we must apply the provision of that section to the present situation just as did the court in State ex rel. Bothwell v. Green, supra. The result of this is that

Mr. W. E. Coffey

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the term of Mr. C. A. Doubet ends January 5, 1947. We understand that Mr. Doubet's name has been placed on the primary ballot and he is therefore eligible to have his name placed upon the ballot at the next general election in November, 1946.

CONCLUSION

It is, therefore, the opinion of this department that the term of Mr. C. A. Doubet ends on the fifth day of January, 1947, and if he desires to hold the office after that date his name should be placed upon the ballot at the general election in November, 1946, so that his candidacy may be voted on by the people.

Respectfully submitted,

SMITH N. CROWE, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:mw