

PROBATE JUDGE: Probate judge not licensed to practice law  
may succeed himself in office, if he was holding  
OFFICERS: said office on March 30, 1945.

*Hammett*

February 10, 1948

*2/20*

FILED  
93

Honorable W. R. Walker  
Member, Missouri Senate  
64th General Assembly  
Jefferson City, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"I would like to have your official opinion upon this question:

"Can a probate judge, who is not a lawyer, and who was elected at the last general election, be a candidate to succeed himself?"

Section 25 of Article V, Constitution of Missouri, 1945, provides that every judge and magistrate shall be licensed to practice law, except that probate judges now in office may succeed themselves as probate judges without being so licensed. Also, the persons who are now justices of the peace, or who may have heretofore been justices of the peace in the state for at least four years, are eligible to the office of magistrate without being licensed. We are primarily interested only in the probate judge in this instance. While it is true that in counties having a population of 30,000 inhabitants or less, the probate judge is also the judge of the magistrate court. However, in such cases, he must qualify for probate judge and not for magistrate. Therefore, we need only look to the qualifications of a probate judge. Section 25 of Article V, supra, reads:

"Judges of the supreme court and courts of appeals shall have been citizens of the United States for at least fifteen years, and qualified voters of this state for nine years next preceding their selection. Such judges shall be at least thirty years of age but shall not continue to hold office after attaining seventy five years of age. Judges of the courts of appeals shall be residents of the district of their

court. Circuit judges shall have been citizens of the United States for at least ten years, and qualified voters of this state three years next preceding their selection, and be not less than thirty years of age and residents of the circuit. Judges of probate and magistrate courts shall be qualified voters of this state, and residents of the county. Probate judges shall be at least twenty five and magistrates at least twenty two years of age. Every judge and magistrate shall be licensed to practice law in this state, except that probate judges now in office may succeed themselves as probate judges without being so licensed, and except that persons who are now justices of the peace, or who have heretofore been justices of the peace in this state for at least four years, shall be eligible to the office of magistrate without being so licensed."

Webster's International Dictionary, Section Edition Unabridged, defines the word "succeed" as follows:

"1. To come next after another person into an office, into possession of an estate, or the like; to fill a vacancy in an inherited, elective, or appointive office; \* \* \* \* \*

"2. To follow another thing in order; to come immediately after by natural necessity, in a prescribed course, or by order of development or occurrence; \* \* \* "

Under the foregoing definitions, unquestionably any probate judge may continue to succeed himself in office as often as the electorate votes for him to retain such office. Had the framers of the Constitution in 1945 intended that such officer could only succeed himself for one term, they should have so limited his service, but in the absence of any such restriction, we are of the opinion that he may continue to succeed himself in office. However, he must have been holding the office at the time of the adoption of the Constitution of 1945, and his terms of office must be continuous.

It now becomes necessary to determine when the foregoing constitutional provision became effective, and also to determine if the probate judge, referred to in your request, was the incumbent in that office at the time the said constitutional provision became effective? Section 3 of Article XV, Constitution of 1875, which provision was in effect at the time of the adoption of the Constitution of 1945, reads in part:

"\* \* \* Upon the approval of such Constitution or constitutional amendments in the manner provided in the last preceding section such Constitution or constitutional amendments shall go into force and effect at the end of thirty days after such election. The result of such election shall be made known by proclamation by the governor."

Section 3(c) of Article XII, Constitution of Missouri, 1945, follows the foregoing constitutional provision as to the effective date of constitutional amendments or new constitutions. Section 11684, R. S. Mo. 1939, requires the Secretary of State to certify the result of such vote on constitutions or constitutional amendments to the Governor of the state, who shall thereupon issue his proclamation declaring such amendments or constitutions ratified and binding. Section 11684 reads:

"If, upon such returns so made to the secretary of state, it is found that there is a majority of the qualified voters of the state voting for and against any one of said amendments, in favor of such amendments, the same shall be deemed and taken to have been ratified by the people, and the secretary of state shall certify the result of such vote to the governor, who shall thereupon, without unnecessary delay, issue his proclamation declaring such amendment ratified by a majority of the qualified voters of this state, and valid and binding to all intents and purposes as a part of the Constitution of the state of Missouri."

The election on the new proposed Constitution of Missouri, 1945, was submitted to the voters by the Constitutional Convention on February 27, 1945. The Governor of this state,

Honorable Phil M. Donnelly, on the 3rd day of March, 1945, issued his proclamation declaring the vote on the proposed new constitution, and further, declared that on or after the 30th day of March, 1945, it shall become the supreme law of the state.

Therefore, we conclude that on and after the 30th day of March, 1945, the Constitution of Missouri, 1945, became the law in this state. Whether or not the probate judge referred to in your request may be a candidate to succeed himself depends upon whether he was the incumbent in that office on March 30, 1945. If he was, then we believe under the foregoing constitutional amendments that he may be a candidate to succeed himself. If he was not the incumbent at that date, then he may not succeed himself.

CONCLUSION

It is the opinion of this department that your probate judge may become a candidate to succeed himself in office, only if on the 30th day of March, 1945, he was holding the office of probate judge in your county.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR *JET*  
Attorney General

ARR:VLM