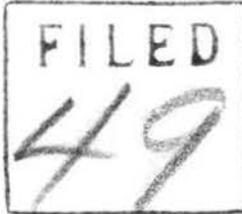


OFFICERS:

PUBLIC OFFICIALS:

The term of Honorable Charles F. Ford as Commissioner of the Bi-State Development Agency is for the term of five years from the regular expiration date of the term of his predecessor in office rather than five years from the date of his own appointment and qualification.



July 21, 1953

Honorable Milton M. Kinsey
Chief Engineer
Bi-State Development Agency
915 Olive Street
St. Louis 1, Missouri

Dear Sir:

You request an official opinion of this Department as follows:

"On April 28, 1953, the Missouri Senate gave its consent to the appointment of Charles F. Ford as a Commissioner of the Bi-State Development Agency. The letter from the Secretary of the Senate to Governor Donnelly stated that the appointment was for 'a term ending 5 years from the time of his appointment and qualification,' and that the appointment was 'vice Wm. G. Marbury, term expired.'

"Mr. Ford qualified and took oath of office on May 14, 1953. The term of Mr. Wm. G. Marbury had expired on November 9, 1952, but he continued to serve, inasmuch as his successor had not been appointed.

"S.B. No. 100, 65th G.A., which provides for the appointment of these commissioners, states in Section 2 that succeeding commissioners 'shall hold office for a term of 5 years.' It occurs to us that if the term of office of the succeeding commissioner is to begin on the date when they qualify, as stated by the Secretary of the Senate in his letter to the Governor, then the provisions of S.B. No. 100 which call for an overlapping of terms would be completely vitiated. On the other hand, if the term begins at the date of expiration of the preceding commissioner,

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then the successor commissioner would not hold office for a full 5 year term.

"The question we would like answered is - does Mr. Ford's term of office expire on November 9, 1957, or on May 14, 1958, or at some other date?"

Provision for appointment of Commissioners of the Bi-State Development Agency is made by the following statutes: Sections 70.380; 70.390 and 70.400, RSMo 1949:

"70.380. Commissioners of bi-state agency, appointment, qualifications.--Within ninety days after sections 70.380 to 70.440 become effective the governor shall, by and with the advice and consent of the senate, appoint five commissioners of the bi-state development agency created by compact between the states of Missouri and Illinois. If the senate is not in session at the time for making any appointment, the governor shall make a temporary appointment as in case of a vacancy. All commissioners so appointed shall be qualified voters of the state of Missouri and shall reside within the bi-state development district established by the compact."

"70.390. Terms of commissioners.--Of the commissioners first appointed one shall be appointed to serve for a term of one year, one for two years, one for three years, one for four years and one for five years. At the expiration of the term of each commissioner and of each succeeding commissioner, the governor shall, by and with the advice and consent of the senate, appoint a successor who shall hold office for a term of five years. Each commissioner shall hold office until his successor has been appointed and qualified."

"70.400. Vacancies filled, how.--Vacancies occurring in the office of any commissioner shall be filled by appointment by the governor, by and with the advice and consent of the senate, for the unexpired term. In any case of vacancy, while the senate is not in session,

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the governor shall make a temporary appointment until the next meeting of the senate, when he shall nominate some person to fill such office."

The question to which you wish an answer is: Is the term of a Commissioner for five years from the date of appointment or is his term for the period of five years from the expiration of the term of his predecessor.

A substantially identical question was answered by the Supreme Court of Missouri in 1889 in State ex rel. Withers vs. Stonestreet, 99 Mo. 361. The pertinent facts in that case were as follows: The Legislature in 1879 provided for the appointment of an Inspector of petroleum oils. The statutory provisions for such appointments were:

(These statutes are quoted in State vs. Stonestreet, supra, l.c. 370, 371:)

"Sec. 5838. The governor shall appoint, for each of the cities of St. Louis, Hannibal, St. Joseph and Kansas City, and for such other cities and towns as shall, by the authorities thereof, petition to him therefor, an inspector of petroleum oils, kerosene, gasoline, or any product of petroleum, by whatever name known, which may be manufactured, offered for sale, or sold for consumption for illuminating purposes, within the state. Each inspector shall be a resident of the city or town for which he is appointed, hold his office for two years from the date of his appointment, and until his successor is duly appointed and qualified, and shall, at his own expense, provide himself with the necessary instruments and apparatus for testing, gauging and branding the oils and fluids by him inspected.

"Sec. 5852. Whenever any vacancy occurs under this article by death, resignation, removal from office or otherwise, the mayor of the city, where the vacancy happens, shall immediately certify the same to the governor, who shall appoint and commission his successor for the remainder of the term of office as herein provided; and in all cases where an inspector shall be charged, by indictment or information, for a violation of the duties of

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his office, as hereinbefore provided, the governor may suspend him from the duties of his office and appoint another one to fill such vacancy during the time such inspector shall remain suspended.'"

It should be noted that the above statutes provided for the term of two years, but set no time for the commencement or ending of such term. In compliance with said statutes the Governor of Missouri appointed the first Inspector for Kansas City for the term of two years from June 18, 1879. Thereafter, other persons were appointed for two year terms, all of which were to expire on June 18 of odd years. On June 4, 1885, one Keedy was appointed for a term expiring June 18, 1887. However, no appointment was made for the term commencing June 18, 1887, and Keedy remained in office until September 26, 1888, when the Governor appointed one Belt to that office and issued to him a commission for two years expiring September 26, 1890. On June 7, 1889, the succeeding Governor appointed Stonestreet for a term of two years from and after June 18, 1889, to fill the office which Belt then occupied. This was an action in Quo Warranto against Stonestreet to determine the legality of his claim to the office. It was necessary to determine whether Belt's term was for two years from the date of his appointment as stated in his commission or whether his term was for two years from the regular expiration date of the term of his predecessor in office. The Court decided that Stonestreet was legally entitled to said office, and that the appointment of Belt was for the term of two years from and after June 18, 1887, rather than two years from his appointment on September 26, 1888. The reasoning of the Court is, in part, as follows, at l.c. 372, 373 and 374:

"The statute is silent on the point as to the beginning of the first appointee's term, and the reason for this is most obvious, since, the power of appointment being lodged in the executive, it belonged to him in fact, if not in law, to determine the time of the inception of the actual official term of such appointee; the duration of that term was already fixed by law. But if the legislature, being possessed of the power, had fixed the date of the commencement of the first appointee's official term, it would not be questioned that such initial point, being once made sure and steadfast, would recur at every corresponding period of two years.

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This must be true, or else the premises from which this conclusion is drawn, sustained as it is by authority, that a 'term of office uniformly designates a fixed and definite period of time,' must be false. As the legislature did not fix the date when the official term of the first appointee under the new law was to begin, this date was necessarily left to be fixed by the appointing power; but, when fixed, the determination thus reached must have been as effectual in all its incidents and consequences as if previously made by the legislature. This also must be true, or else it must be true that the executive was incapable of fixing such initial point, and that, therefore, it never was fixed, which is an impossible, as well as an absurd, supposition.

"This reasoning leads to this result: That the date of the appointment, first made by the governor for the office in question, initiated the official term of the first appointee, and that all subsequent appointments necessarily had reference to such initial period, and, so far as lawful, conformed thereto. This conclusion is well sustained by authority. Attorney General ex rel. v. Love, 39 N.J.L. 476, is decisive of this point. And the general rule is elsewhere recognized that when no time is mentioned in the law, from which the term shall commence, it must begin to run from the date of election. State ex rel. v. Constable, 7 Ohio, 7; Marshall v. Harwood, 5 Md. 423; Hughes v. Buckingham, 5 S. & M. 632.

"These last, though election cases, furnish a strong analogous support to the view already expressed, showing as they do, the urgent necessity felt of having some determinate period at which and from which official terms shall begin. The law favors uniformity, but uniformity cannot be obtained except by the establishment of an inflexible rule. And the course in the

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office of the executive in regard to appointment of the first appointee, the language of his commission, and the language of all subsequent commissions, except that of relator, fixing the beginning of such official term at June 18, biennially, as the period from which to reckon the duration of such term, affords a contemporaneous, as well as a continuous, exposition of the meaning of the law, and of the intention of its makers, that is not without value in the present investigation. Such contemporaneous and continuous construction, in the absence of anything of a countervailing character, should be sufficient per se to settle the controversy on the point in hand adversely to the relator.

* * * * *

(L.C. 375, 376:)

"* * * inasmuch as the term of office of the first appointee began on the eighteenth day of June, 1879, and continued for two years from and after that date, that the term of office of each successive appointee, whether for a whole term or for the part of an unexpired term, was regulated and controlled by the date fixed by the first appointment; and that it was beyond the power of the executive, when making subsequent appointments, to ignore or disregard the tenure of office thus first established. It was as binding upon after-coming executives, as if in terms it had been so fixed by the legislature. And it may be said, in concluding this paragraph, that the sections of the statutes, which have been discussed, are by no means peculiar in providing that a coal oil inspector shall hold his office until his successor is elected and qualified. This provision is one common both to our organic and statutory law. * * *."

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This case was extensively quoted with approval by the Supreme Court in *State ex inf. vs. Williams*, 222 Mo. 268, l.c. 278, et seq. The statutory provisions provided for the appointment of Commissioners to the Bi-State Development Agency quoted above are similar to the provisions of the statutes in *State ex rel. Withers vs. Stonestreet*, supra, in that the Governor is authorized to appoint Commissioners for a definite term of years but no specific time of commencement or ending of such terms are specified. It is further apparent that the intent of the Legislature was to provide for rotation of the terms of each Commissioner, so that there would be a Commissioner appointed each year, and yet there would remain on the Board at all times, four experienced Commissioners. It is further apparent that, where the term of a Commissioner commences at the time of his appointment and runs for five years thereafter, any delay in appointing a new Commissioner would, over a period of years, have the effect of destroying the legislative scheme for the regular rotation of the Commissioners of the Agency.

CONCLUSION

It is, therefore, the opinion of this office that the term of Honorable Charles F. Ford as Commissioner of the Bi-State Development Agency is for the term of five years from the regular expiration date of the term of his predecessor in office rather than five years from the date of his own appointment and qualification.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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