



OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

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ATTORNEY GENERAL

September 3, 1971

OPINION LETTER NO. 402

Honorable William J. Esely
Senator, District 12
1414 Main
Bethany, Missouri 64424

Dear Senator Esely:

This letter is in response to your opinion request in which you ask:

"In the event of a contested township election, whereby, in the plaintiffs' petition the legality of the entire election is challenged, do the old Township Board members, collector, assessor and clerk carry over in their official capacities until the election contest is finally decided? If not, then who are the legal Township officers, how and by whom are they determined?"

It is our understanding that the persons who claim the right to the offices involved have not given bond, qualified or taken the oath of office. It is also our understanding that no appointments have been made under Section 65.200, RSMo 1969, relative to appointments of officers when persons elected fail to qualify. The question presented is whether township officers who were in office at the time of the election have the authority to hold office until their successors are chosen and qualified.

Section 65.190, RSMo 1969, provides in part:

"...Township officers shall hold their offices for two years, and until their successors are chosen or appointed and qualified."

Honorable William J. Esely

This provision is consistent with Section 12, Article VII of the Missouri Constitution which provides:

"Except as provided in this Constitution, and subject to the right of resignation, all officers shall hold office for the term thereof, and until their successors are duly elected or appointed and qualified."

In our view the above provision of the Missouri Constitution as well as Section 65.190 applies to such officers. State v. Davis, 418 S.W.2d 163 (1967), Davenport v. Tettters, 315 S.W.2d 641 (1958).

We note that in State v. Davis, above, the Supreme Court of Missouri in interpreting the provisions of Section 12, Article VII of the Missouri Constitution and of Section 105.010, RSMo 1969, which relates to public officers generally and is similar in context to Section 65.190, noted with approval the holding of that court in Langston v. Howell County, 79 S.W.2d 99 (1934) that:

"During the time an officer so holds over, under the provisions of the constitutional and statutory provisions, supra, he holds the office as a de jure officer (46 C.J. p. 969) and by the same tenure, after the prescribed term, until the right of his duly chosen and qualified successor attaches."

We conclude, in the premises, as there are no other controlling constitutional provisions, that such township officers hold office for their term of office and until such time as their successors are duly elected or appointed and qualified.

Very truly yours,

JOHN C. DANFORTH
Attorney General