COUNTY HOSPITAL TRUSTEES: TERMS OF OFFICE: The order of the County Court of Texas County made on February 16, 1959, appointing trustees to the Texas County Hospital was a valid order; the limitation to January, 1960, which was a part of the order, was contrary to law and so was invalid. The appointments actually extend until the next general election following February 11, 1959. For the reasons given above, the County Court would not be empowered to appoint new trustees in January, 1960. The County Court has no power of removal of these trustees prior to the time of the termination of their appointments, and a successor or anyone or all of them can only be appointed by the County Court when there is a vacancy on the board of trustees.

November 16, 1959

FILED
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Honorable William E. Gladden
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Mr. Gladden:

Your recent request for an official opinion reads:

> "I respectfully request an opinion from your office on the following question:
>
> "The County of Texas has established and is now maintaining a county hospital in accordance with the provisions set forth in Chapter 205, V.A.M.S. 1949. In accordance with Section 205.170, V.A.M.S. 1949, the County Court did appoint five trustees on September 21, 1956. Thereafter the same trustees were reappointed by the County Court on February 11, 1957, for the reason that no person filed for the office of trustee as provided for in order to be voted upon at the general election held in November, 1956. The next general election was in November 1958, and again no one filed an announcement of candidacy for the position of trustee of the county hospital. Thereafter on February 16, 1959, the County Court made an order appointing the same men that had served as trustees previously to serve as trustees of the county hospital until January, 1960.
>
> "Question: 1. Is the order of appointment made by the County Court on February 16, 1959, appointing persons to serve until January, 1960, a valid order on the part of the County Court inasmuch as it does not provide that the persons shall serve until the next general election?

"2. If it is a valid order, would the County Court be empowered to appoint new trustees in January, 1960?

"3. If the order appointing trustees to serve until January, 1960, is determined to be valid and if it is found that such trustees will serve until the general election in 1960, contrary to the wording of the court order, then in view of the fact that the trustees were appointed by the County Court rather than elected, on what basis could the County Court remove any one or more of the trustees, i.e., do the trustees serve at the pleasure of the County Court or must there be some specific cause for removal of the trustees by the County Court that appointed same?"

We assume that the appointments of September 21, 1956, were valid. You state that they were in accordance with Section 205.170, V.A.M.S. We also assume that these appointments were until the next following general election inasmuch as numbered paragraph (2) of Section 205.170, supra, states that trustees so appointed "shall hold their offices until the next following general election . . . " and since you state that the appointments were in accordance with Section 205.170.

You next state that on February 11, 1957, the county court reappointed the same trustees for the reason that no person filed for the office. This the county court was authorized to do by numbered paragraph (1), Section 205.180, which reads:

"(1) Each candidate for the office of hospital trustee shall file with the county clerk an announcement of candidacy in writing not later than thirty days before the general election. Such announcement shall indicate whether the individual is a candidate for a full or an unexpired term of a named predecessor. No filing fee shall be required to be paid upon the filing of any such announcement. If announcements of a sufficient number of trustees are not filed, the county court shall appoint such trustee or trustees as may be necessary to fill all vacancies on the board which result from

> the expiration of the term of any trustee or trustees and any such appointee shall serve until the next general election when a trustee shall be elected to fill the remainder of the unexpired term."

We assume also, since you do not state to the contrary, that these appointments were until the next general election.

The next following general election was in November, 1958, and you state that once more no one filed for the positions of trustees, and that on February 16, 1959, the county court made an order appointing the same men who had served as trustees "to serve as trustees of the county hospital until January, 1960," instead of appointing these men "until the next following general election," as had been done in 1956 and 1957.

Your first question is whether this order of appointment made on February 16, 1959, was a valid order because it did not provide that the persons so appointed should serve until the next general election, but, for some reason which does not appear, the order made the term only until January, 1960.

Certainly the county court would have the right on February 16, 1959, to appoint trustees on the basis of numbered paragraph (1) of Section 205.180 set forth above. Therefore, the appointments made on that date were valid appointments. But the limitation imposed, to wit, "until January, 1960," was not a valid limitation because the law as set forth above states that such appointment shall be "until the next general election."

It is our belief that the limitation portion of the appointment made on February 16, 1959, was invalid because it is not in harmony with the law, and that, being invalid, it was of no force and effect but that it did not invalidate the appointment and that, being invalid, the limitation will not hold and that instead of ending in January, 1960, the appointments will go on until the next general election.

In view of our answer to your first question, your second question is automatically answered in the negative.

Your third question is predicated upon the assumption which we have reached above that the order of February 16, 1959, was valid but that the trustees so appointed will serve until the

general election in 1960, then would the fact that the trustees were appointed by the county court rather than elected by the voters afford any basis for the county court to remove any one or more of the trustees? In this regard, we direct attention to numbered paragraph 4 of Section 205.170 which reads:

> "4. Any vacancy in the board of trustees occasioned by removal, resignation or otherwise shall be reported to the county court and be filled in like manner as original appointments, the appointee to hold office until the next following general election, when such vacancy shall be filled by election of a trustee to serve during the remainder of the term of his predecessor."

We find no law other than the above bearing upon this matter, and we do not see that the above law vests in the county court any power of removal, regardless of whether the trustees held their positions by election or by appointment. All of the authority that is vested in the county court in this regard is to fill a vacancy on the board <u>if</u> such <u>vacancy</u> occurs.

In the instant situation it would seem to be clear that there is no vacancy on the board. Indeed, your query is whether or not the county court can create one or more vacancies by dismissing, at its pleasure, one or more or all of the board members. We assume that if the full number of members were not on the board the county court would not, through you, have wanted an answer to this question.

The county court is given the power to fill a vacancy on the board if a vacancy is created "by removal, resignation, or otherwise . . . ."

In the case of the State vs. Police Commissioners, 14 Mo. App. 297 at l.c. 302, the St. Louis Court of Appeals stated:

> "It is not disputed that the power of removal at pleasure is incidental to the power of appointing, in the absence of any inconsistent limitation in the law which creates the authority to appoint. <u>If the law provides a term for the incumbency, this will supersede the incidental power of removal during the continuance of the term</u>. * * * " (Emphasis ours.)

Honorable William E. Gladden

CONCLUSION

It is the opinion of this department that the order of the County Court of Texas County made on February 16, 1959, appointing trustees to the Texas County Hospital was a valid order; that the limitation to January, 1960, which was a part of the order, was contrary to law and so was invalid, and that the appointments actually extend until the next general election following February 11, 1959.

It is the further opinion of this department that for the reasons given above the county court would not be empowered to appoint new trustees in January, 1960.

It is the further opinion of this department that the county court has no power of removal of these trustees prior to the time of the termination of their appointments, and that a successor or any one or all of them can only be appointed by the county court when there is a vacancy on the board of trustees.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW:ar/om