

COUNTY TREASURER:
TOWNSHIP FORM OF
ORGANIZATION:

A sheriff in a third class county under the township form of organization is eligible to be elected to the office of county treasurer.

June 20, 1960



Honorable Alvin Walker
Prosecuting Attorney
Mercer County
Princeton, Missouri

Dear Mr. Walker:

Your recent request for an official opinion reads:

"Your opinion is respectfully requested relative to the eligibility of a Sheriff in a County of the Third Class with the Township Form of government to the office of County Treasurer.

"As you are aware, Section 54.040 prohibits a Sheriff from seeking the office of Treasurer. However, in view of the reasoning in the case of State ex inf. Noblet we rel. McDonald v. Moore, 152 SW 2d 86 it would appear that where a county is organized under the Township form of government the Sheriff would be eligible in view of the liberal construction accorded under the law. The Sheriff in such a county would cease to be Sheriff on the last day of the year and would make final settlement with the present Treasurer on that date. If elected, such person would not take office until the following April, consequently would not be Sheriff for a period of over three months prior to taking office as Treasurer.

"Under the circumstances, your considered opinion would be greatly appreciated, for which please accept my thanks in advance."

Section 54.040, RSMo 1949, to which you refer reads:

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"No sheriff, marshall, clerk or collector, or the deputy of any such officer, shall be eligible to the office of treasurer of any county."

We note the case of State v. Moore, 152 SW2d 86, to which you also refer. This was a case which involved Nodaway County, a county which, like Mercer, is a third class county with a township form of governmental organization. In that case the respondent, Mattie E. Moore, was elected, in 1939, township collector of Polk township in Nodaway County, for a two-year term expiring March 28, 1941. She was the nominee of her party for county treasurer at the general election in 1940, and was elected for a term to begin April 1, 1941. She furnished the proper bond, which was approved, and received her commission for the office. There were brought proceedings in quo warranto against her by the prosecuting attorney of Nodaway County to oust her from the office of county treasurer. The contention of the state was bottomed upon Section 13799, RSMo 1939, which is now Section 54.040, supra.

At the beginning of its consideration of this matter the Supreme Court of Missouri en Banc observes (l.c. 87):

"At the outset we should observe that statutes prescribing requirements of eligibility to an elective office must be given a liberal construction. This is so because in our democratic form of government the greatest possible freedom of choice in the selection of their officers is a natural right of the people and this right must be zealously guarded by the courts. * * *"

The court further stated that the case of the state rested solely upon the case of State ex rel. McAllister v. Dunn, 277 Mo. 38, 209 SW 110. In regard to that case the court observed (l.c. 87 [2]):

"That case was also an action in quo warranto involving the same statute. The respondent in that case had been a deputy collector of the City of St. Louis and while such he was elected city treasurer. It was contended that he was ineligible to hold such office in view of the prohibition of the statute. It was conceded that the statute was applicable to officers of the City of St. Louis as county officers because of the classification of St. Louis as a county rather than a city. We held that respondent was ineligible to the office of treasurer and ousted

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him on the sole ground that the purpose of the statute was to obviate the situation where 'one could be chosen treasurer and take and hold the office when, in all probability, public money in his hands in his former official capacity would have to be received and receipted for by himself in his new official capacity.'

"In considering this finding as to the purpose of the statute it must be borne in mind that a county treasurer ordinarily takes office on the first day of January, Sec. 13792, R.S. 1939, Mo.St. Ann. §12130c, p. 6437, and that the term of a county collector extends beyond this date and does not expire until the first Monday in March, Sec. 11073, R.S. 1939, Mo.St. Ann. §9902, p. 7960. Under these circumstances a county collector, to take the office of treasurer, would have to resign as collector before his term was over and before the time for his final settlement which might give rise to the very situation we held the statute intended to avoid. The same situation could have arisen at the time of the original enactment of the statute, although the precise limitations of the terms of the various offices were not then specified in every instance.

"On the other hand the statute prescribing the term of a county treasurer in the cases of counties under township organization is different from the one governing counties not under township organization. In the case of the former the commencement of the term is postponed from January 1 to April 1. As a result the term of respondent in this case as county treasurer did not commence until after the expiration of her term as township collector. The term of the latter office expired on March 28, by which time her final settlement was required to be and was made, and was approved by the county court. Her duties and responsibilities as township collector were entirely concluded before the commencement of her term as county treasurer on April 1. In view of this difference in the facts of this case our decision in *State ex rel. McAllister v. Dunn*, neither gives support to relator's contention nor is controlling."

The conclusion of the court was (1.c. 88 [3]):

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"* * *Therefore, respondent is not ineligible to the office of county treasurer because she held the office of township collector and having been duly elected county treasurer she is entitled to retain the office. * * *"

We do believe that the instant case comes within the purview of the Moore case and that the situation which the statute (54.040) seeks to avoid, to-wit: the handling as treasurer of public money which he had received in his former official capacity as sheriff would not exist. It is made clear by the Moore case that the avoidance of such a situation is the sole purpose and intent of the statute. The Moore case held that under the circumstances in that case this situation could not arise and that, therefore, the statute did not apply. The same situation lies in the instant case, as you point out.

Section 57.150, RSMo 1949, reads:

"Whenever the term of office of any sheriff shall expire, it shall be the duty of said sheriff to turn over to his successor in office all money in his hands due any party to a partition suit, either plaintiff or defendant, all money due guardians ad litem or attorneys, and all money due any witness, juror, constable, magistrate, circuit clerk, county clerk, judge of probate, sheriff or coroner, or due any one who has formerly held any one of said offices. The fees due for paying out any such fees or money shall thereupon be due to the sheriff receiving such fees or money. The sheriff receiving such fees or receiving money due any party to a partition suit, or due any guardian ad litem or attorney, and the securities on said sheriff's bond, shall be liable for the payment of said money to the person or persons entitled thereto, or for the payment of the same to the county treasurer, or the state treasurer, as is now provided by law."

It will be noted that the above section requires a sheriff to make a final settlement and turn over all funds in his hands when his term expires, which would be on December 31 of the last year of his term.

Section 54.030, RSMo, reads:

"In counties of classes three and four the qualified electors shall elect a county treasurer at the general election in the year 1950, and every four years thereafter, except

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that in those counties having adopted the township alternative form of county government the qualified electors shall elect a county treasurer at the November election in 1948, and every four years thereafter. The county treasurer so elected shall be commissioned by the county court of his county, shall enter upon the discharge of the duties of his office on the first day of January following his election, and shall hold his office for a term of four years and until his successor is elected and qualified unless sooner removed from office. In counties which have adopted the township alternative form of county government the treasurer's term shall extend until the first day of April next after the election of his successor."

From the above it will be noted that in township organization counties the county treasurer does not take office until the first day of April. Thus we note that there is a spread of three months between the time that the sheriff who has been elected county treasurer ends his term as sheriff before he begins his term as county treasurer. Since he is required to make final settlement on the last day of his term, which would be December 31, he would not as county treasurer have at his disposition any settlement of any moneys which he collected as sheriff.

We may further note that Section 57.160, RSMo 1949, holds that any outgoing sheriff who fails or refuses for sixty days following the expiration of his term to turn over to his successor in office any fee or money required to be turned over by the provisions of Section 57.150, supra, shall be liable on his bond for double the amount, and in addition shall be deemed guilty of a misdemeanor.

On the basis of the reasoning in the Moore case, which held that the treasurer elect could retain her office, we believe that the sheriff in the instant case would be eligible for election for the office of treasurer.

CONCLUSION.

It is the opinion of this department that a sheriff in a third class county under the township form of organization is eligible to be elected to the office of county treasurer.

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

Very truly yours,

JOHN M. DALTON
Attorney General