

COUNTY HIGHWAY COMMISSION:

The terms of members of County Highway Commission begin on the date of the appointment of the original commission by the county court, and thereafter, one commissioner should be appointed each year for a four-year term beginning on that date.

February 2, 1948

Honorable Frank Collier
Prosecuting Attorney
Wright County
Mountain Grove, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"As prosecuting attorney of Wright County, I request the following opinion of your department:

"The county court in the year 1927, after the enactment of what is now Section 8503, R.S., 1939, appointed a County Highway Commission, in conformity with the statute, namely one commissioner for a term of one year, one of a term of two years, one for a term of three years, and one for a term of four years, as well as complying with the requirements as to residence in proper districts and political affiliations. This commission organized, as required and entered upon the duties of their office. Since that time the commission has functioned, with original as well as other appointees.

"Through some manner, since the original appointments, the statute has been disregarded, overlooked or something, in that they did not continue to appoint a member each year for a four year term. The result now is that the commissioners have lately been appointed for terms of four years each, but two appointed

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each year, and these two appointed one year apart. In other words, two members terms expired in the fall of 1947, and according to the terms the other two members terms will expire in May of 1948.

"It is apparent that the statute has not been complied with, but the thought is, how can the matter be straightened out to enable the court to appoint one member each year as provided by the statute in the future."

The creation of county highway commissions was provided by an act of the General Assembly of the State of Missouri, which became effective July 3, 1927. Laws of 1927, page 421, Section 8502, R.S. Mo. 1939. Section 2 of that act, Section 8503, R.S. Mo. 1939, contained the following provision:

"* * * Not more than two of said commissioners shall be appointed from the same county court district, and not more than two thereof shall be affiliated with the same political party. No person shall be eligible to appointment as a member of the county highway commission who shall not have attained the age of twenty-five years, and who at time of his appointment is not a bona fide resident of county wherein appointed, and possessed of a knowledge of the interest of said county, and a known supporter and advocate of a system of county highways, constructed and maintained with a view to affording the greatest convenience to the greatest number of inhabitants of the county in the matter of farm-to-market roads. Within ten days after their appointment the members of such county highway commission shall meet at the county seats and organize by the election of one of their number as president, and another as secretary, of said commission."

Inasmuch as the statute fixed no date for the commencement or termination of the terms of the commissioners, those dates became fixed by the date of the appointment of the original commission. State ex rel. Rosenthal v. Smiley, 304 Mo. 549, l.c. 558, 263 S.W. 825. Thereafter, the County Court should have appointed, as of the same date of the original appointment, in each succeeding year, one person for a term of four years.

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The purpose of the legislation, in providing varying terms for the first commission, was to prevent the entire commission's going out of office at one time. In such circumstances, a person appointed to fill a vacancy would serve only until the end of the term of the member whom he succeeded. The same would be true of a person appointed to succeed a member whose term had expired, but who was holding over because his successor had not been appointed. In such instance, a new appointee would serve for a period of four years from the date of the expiration of the term of the person whom he succeeded, not four years from the date of appointment. Heyward v. Long, 178 S.C. 351, 182 S.E. 145, 114 A.L.R. 1130; 43 Am. Jur. 18.

Applying these principles to the situation in your county in order to correct the method of appointment to conform with the statute, the date of the appointment of the original commission should be ascertained, as well as the terms for which each of the original commissioners was appointed, then, by tracing which of the original commissioners each of the present commissioners has succeeded, the proper date of expiration of the terms of the present members of the commission can be ascertained and all future appointments should be made on the basis of the terms so established. If the court has purported to appoint a commissioner for a four-year term which would expire later than the date at which his term would have expired had all previous appointments been made in accordance with law, the term should be regarded as ended at such earlier date and a new appointment for a term of four years made at such time.

CONCLUSION

The terms of members of County Highway Commission begin on the date of the appointment of the original commission by the county court, and thereafter, one commissioner should be appointed each year for a four-year term beginning on that date.

Respectfully submitted,

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APPROVED:

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