

diately after receipt of your inquiry I was required to be out of the office for several days on other business.

Yours very truly,

T. F. WEST,
Attorney General.

STATE ATTORNEY APPOINTED BETWEEN SESSIONS OF LEGISLATURE—TERM OF OFFICE.

Tallahassee, Fla., April 14, 1916.

*Honorable Park Trammell, Governor,
Tallahassee, Florida.*

Dear Sir:—

Yours of the 12th instant has been received.

The inquiry, as I understand it, is whether or not an appointee to the office of State Attorney in this State, who is appointed and commissioned after the adjournment of the last preceding session of the legislature will hold office, by virtue of such appointment, beyond the final adjournment of the next ensuing session of the Senate?

This situation is covered, I think, by Section 301 of the General Statutes of 1906, reading as follows:

"301. (217.) Filling vacancies.—In all such cases, and in all other cases in which a vacancy may occur, if the office be a State, district or county office (other than a member or officer of the legislature), it shall be the duty of the Governor to fill such office by appointment, and the person so appointed shall be entitled to take and hold such office until the same shall be filled by an election as provided by law, and in cases requiring the confirmation or the advice and consent of the Senate, the person so appointed may hold until the end of the next ensuing

session of the Senate unless an appointment be sooner made and confirmed and consented to by the Senate."

This statute, it will be noted, was Section 217 of the Revised Statutes of 1892.

In considering a similar question the Supreme Court, in the case of *Simonton v. State*, 44 Fla. 289, at page 317, said:

"Under the present statute, however, Section 217 Revised Statutes, it would be the duty of the Governor to appoint, and such appointee would hold until the end of the next ensuing session of the Senate unless an appointment should be sooner made and confirmed or consented to by the Senate (Executive Communication, 14 Fla. 277), and when the Senate next met it would be the duty of the Governor and Senate to fill the office for the unexpired term under the original power to appoint. With this statute in force the Governor could not grant a commission under Section 7, Article IV for the unexpired term, for the reason that in such a case the statute and the Constitution together would provide a mode of filling the vacancy for the unexpired term."

In an Advisory Opinion to the Governor, in which a similar question was involved, reported in 64 Fla. 16, the court said, at page 20:

"The Constitution clearly contemplates joint action by the Governor and Senate in the matter of these appointments, when possible and as soon as possible, and the provision for a *locum tenens* until the Senate may act requires the construction that the Senate should be permitted to act when next in session however convened."

This opinion was given to the Governor by the Justices of the Supreme Court in reply to an inquiry if it is the duty of the Governor under the Constitution to transmit to the Senate for its action thereon appointments to the offices of Circuit Judge, State Attorney, etc., that have

been made since the adjournment of the last session of the Senate, when the Legislature is convened in extra session by Executive Proclamation.

In the situation stated, my opinion is that an appointee to the office of State Attorney, who is appointed and commissioned after the adjournment of the last preceding session of the legislature, will hold office by virtue of such appointment only to the end of the next ensuing session of the Senate.

Respectfully submitted,

T. F. WEST,

Attorney General

**SHERIFFS' FEES WHERE NO INDICTMENT FILED
—COMMISSIONS ON MONEYS DERIVED FROM
HIRE OF COUNTY CONVICTS.**

Tallahassee, Fla., April 18, 1916.

*Honorable Park Trammell, Governor,
Tallahassee, Florida.*

Dear Sir:—

Your communication of the 17 instant received, requesting opinion upon the questions contained in a letter attached thereto from Honorable R. L. Kennerly, Sheriff of Putnam County, reading as follows:

"Please advise me on the following law, as the Auditor and myself disagree on the following questions:

"His ruling is, on Criminal Cases, that when no true Bill is found, that the sheriff is entitled to the costs of Executing the Warrant only, but not entitled to his fees for serving the witnesses in the case,

"As I understand the law in Criminal cases, that if the Courts issue and deliver to the sheriff, warrants and sum-