

TERMINATION OF APPOINTMENT

The appointment dated August 6, 1976, filed with the Secretary of State, of Clinton Wyant of Route 2, Palisade, Aitkin County, Minnesota, as Judge of the Ninth Judicial District Court, effective October 15, 1976, for a term until a successor is chosen and qualified, is hereby terminated in accordance with the decision of the Crow Wing County District Court (Amdahl, J.) in the matter entitled Ben F. Grussendorf v. State of Minnesota, et al., File No. 38834 (Crow Wing County District Court, Ninth Judicial District, filed September 3, 1976), copy attached.

Executed in St. Paul, Minnesota, this 29th day of September, 1976.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Minnesota to be affixed at the Capitol, in the City of Saint Paul, this 29th day of September in the year of our Lord one thousand nine hundred seventy-six, and of the State the one hundred seventeenth.

Wendell R. Anderson
GOVERNOR

Joan Anderson Grove
Secretary of State

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STATE OF MINNESOTA
DEPARTMENT OF STATE
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Joan Anderson Grove
Secretary of State

STATE OF MINNESOTA
COUNTY OF CROW WING

DISTRICT COURT
NINTH JUDICIAL DISTRICT

Ben F. Grussendorf,

Plaintiff,

-vs-

State of Minnesota, Wendell
R. Anderson, as Governor of
the State of Minnesota, Warren
Spannaus, as Attorney General
of the State of Minnesota,
Robert W. Mattson, as State
Auditor of the State of Minnesota,
James Lord, as State Treasurer
of the State of Minnesota, and
Paul L. Groschen, as Executive
Director of the Minnesota State
Retirement System,

Defendants.

FINDINGS OF FACT
CONCLUSIONS OF LAW
ORDER FOR JUDGMENT

File No. 38834

By Order of the Supreme Court dated July 30, 1976 the undersigned Judge of the District Court was assigned to serve and discharge the duties of Judge of the District Court of the Ninth Judicial, State of Minnesota, to try and determine the above-entitled cause.

On August 30, 1976 the matter came regularly on for hearing before the undersigned on cross-motions for summary judgment.

William E. ^{KALAR} Kahler, Esq., appeared for and on behalf of plaintiff, and Byron E. Starns, Esq., Chief Deputy Attorney General, Merwin Peterson, Esq., Assistant Attorney General, and Richard Lockridge, Esq., Special Assistant Attorney General, appeared for and on behalf of defendants.

The parties generally agreed that the statement of facts set forth in defendants' Memorandum is complete and correct. Such statement provides:

"Plaintiff was appointed a judge of the district court on January 30, 1968 and elected to a six-year term in 1970. He attained the age of seventy on July 27, 1976. At both the time he was appointed and the time he was elected, Minn. Stat. §§ 490.101 and 490.102 (1974) (hereinafter the "old law") governed the retirement of district court judges. This law provided judges several options concerning their pensions and retirement date. Plaintiff asserts that these retirement provisions of the old law were important inducements for his acceptance of the appointment to the district court and for his subsequent filing for election to that office. Defendants do not dispute this assertion.

"During the 1973 legislative session the legislature enacted a general revision of the retirement statutes applicable to supreme, district and county court judges. The revision is codified as Minn. Stat. §§ 490.121-132 (1974) (hereinafter the "new law") and became fully effective on January 1, 1974. These new provisions, inter alia, require all judges, with certain exceptions, to retire on the last day of the month in which they attain the age of 70. Minn. Stat. §§ 490.125, subd. 1 and 490.121, subd. 12 (1974).

"Plaintiff attained the age of 70 on July 27, 1976, after eight and one-half years of judicial service. However, prior to becoming 70 years of age, plaintiff, pursuant to the old law, requested the Governor to extend his term until at least February 1, 1978 to enable him to attain a total of ten years of judicial service. (Under the old law, absent such an extension to ten years, plaintiff would have received no retirement benefits. However, under that law, after completing ten years of judicial service, plaintiff would have received an annuity in an amount equal to one-third of the salary of his office at the time of retirement. Minn. Stat. § 490.102, subd.3(a) (1974). On July 21, 1976, the Governor, citing a lack of statutory authority, declined to grant plaintiff an extension of his term of office."

In addition to such agreed facts, the record will reflect that on August 3, 1976 this Court made its Order that "plaintiff shall remain in office at full compensation as Judge of the District Court and fully perform the functions of that office until it is finally determined whether or not the law of this State requires that plaintiff vacate said office on August 1, 1976."

And it was further ordered, "That defendants and each of them shall take no action to remove plaintiff from office or to terminate his compensation until said final determination."

Upon all the files, records and proceedings herein, and upon the facts as above set forth, and upon the Memorandum submitted and the argument of counsel, and upon the Memorandum attached, the Court concludes that plaintiff is entitled to an Order of this Court granting him summary judgment as follows:

1. That plaintiff is entitled to an extension of his term to February 1, 1978 and that defendant Wendell R. Anderson, as Governor of the State of Minnesota, is required to accept and grant plaintiff's application for such extension.

2. That plaintiff is entitled to the full salary of a judge of district court to February 1, 1978 if he continues to perform the duties of such office to that date.

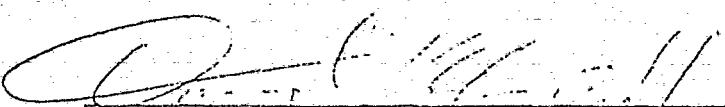
3. That upon completion of his term as extended to February 1, 1978, plaintiff is entitled to a retirement pension in the amount of 33 1/3% of the salary of a district court judge at the time of his retirement.

4. That plaintiff is entitled to an Order denying defendants' motion for summary judgment.

Let judgment be entered accordingly.

BY THE COURT:

Dated: September 3, 1976.


Douglas K. Amdahl,
Judge of District Court.

Let the attached Memorandum
be made a part hereof.