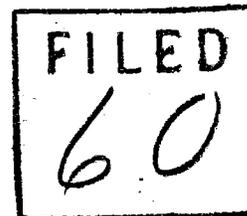


CONSTITUTIONAL: Whether the provision of Sec. 25, Art. V of the
LAW: Constitution of 1945 regarding retirement age of
judges applies to judges of the Probate Courts.

September 26, 1945

10-2



Mr. Emory Medlin
Prosecuting Attorney
Cassville, Missouri

In your letter of September 13, 1945, you requested an opinion of this department as follows:

"On page 9 of the New Constitution under Judicial Department, and on page 10, at the close it says "No appellate judge may continue in office after he has become seventy-five years of age". Now, what I would like to know is, does that apply to probate judges? I would appreciate your opinion.

"I also want to call your attention to the case of State vs. Coffman, in 188th S. W. 2d., on page 860 which I think will be of some benefit to the prosecuting attorneys over the state."

The section to which you refer in your letter is Section 25, of Article V, of the Constitution of 1945 which section reads as follows:

"Judges of the supreme court and courts of appeals shall have been citizens of the United States for at least fifteen years, and qualified voters of this state for nine years next preceding their selection. Such judges shall be at least thirty years of age but shall not continue to hold office after attaining seventy five years of age. Judges of the courts of appeals shall be residents of the district of their court. Circuit judges shall have been citizens of the United States for at least ten years, and qualified voters of this state three years next preceding their selection, and be not less than thirty years of age and residents of the circuit. Judges of probate and magistrate courts shall be qualified voters of this

state, and residents of the county. Probate judges shall be at least twenty five and magistrates at least twenty two years of age. Every judge and magistrate shall be licensed to practice law in this state, except that probate judges now in office may succeed themselves as probate judges without being so licensed, and except that persons who are now justices of the peace, or who have heretofore been justices of the peace in this state for at least four years, shall be eligible to the office of magistrate without being so licensed.

Section 1 of Article V of the Constitution of 1945 reads as follows:

"The judicial power of the state shall be vested in a supreme court, courts of appeals, circuit courts, probate courts, the St. Louis courts of criminal correction, the existing courts of common pleas, magistrates courts, and municipal corporation courts."

Section 4 of Article V of the Constitution of 1945 reads as follows:

"The supreme court, courts of appeals, and circuit courts shall have a general superintending control over all inferior courts and tribunals in their jurisdictions, and may issue and determine original remedial writs."

Section 10 of Article V of the Constitution of 1945 reads as follows:

"Cases pending in any court of appeals shall be transferred to the supreme court when any member of the court of appeals or any division thereof dissents from the majority opinion and certifies that he deems said opinion to be contrary to any previous decision of the supreme court or of any of the courts of appeals, and may, after opinion, be transferred to the supreme court by order of either the court of appeals or the supreme court because of the

general interest or importance of a question involved in the case, or for the purpose of re-examining the existing law, or pursuant to supreme court rule. The supreme court may finally determine all causes coming to it from any court of appeals, whether by certification, transfer or certiorari, the same as on original appeal."

Section 13, of Article V of the Constitution of 1945, reads as follows:

"The courts of appeals shall be composed of three judges each, and shall continue as now established, with appellate jurisdiction coextensive with their district, the boundaries of which may be changed by law as public convenience may require. They shall have jurisdiction of appeals as provided by law from all inferior courts in their districts except appeals within the exclusive jurisdiction of the supreme court. They shall hold sessions at places provided by law and at times provided by their rules."

Section 23, of Article V of the Constitution of 1945, reads as follows:

"Judges of the supreme court and courts of appeals shall be selected for terms of twelve years, judges of the circuit courts for terms of six years, judges of the probate and magistrate courts and of the St. Louis courts of criminal correction for terms of four years, and all other judges for terms provided by law."

Section 26 of Article V of the Constitution of 1945, reads as follows:

"Appellate and probate courts shall appoint their own clerks."

The determination of the question raised by your letter turns, we think, on the question of whether or not a probate court is a court of appeals, for the reason that the second sentence of Section 25 of Article V of the new Constitution, which is the provision placing a limitation on holding office after seventy five years of age, refers back to the first sentence of that section and this first sentence deals only with judges of the Supreme Court and courts of appeals. Thus the age limit provision of the second sentence applies only to judges of the Supreme Court and courts of appeals.

The question of whether the probate courts fall within the term "courts of appeals" must be determined by the following rules of construction. The primary rule of construction is to ascertain the law-makers intent from the words used. (Artophone Corporation v. Coale, 133 S. W.(2d) 343, 345 Mo. 344; City of St. Louis v. Pope, 126 S. W.(2d) 1201, 344 Mo. 479; American Bridge Co. v. Smith, 179 S. W.(2d) 12; Metropolitan Life Insurance Co. v. Schufler, 180 S. W.(2d) 472.) The meaning of a word in a statute must be determined by the character of its use. (State ex rel. Case v. Seahorn, 223 S. W. 664, 283 Mo. 508.) In determining the meaning of any particular portion of a statute the whole statute must be considered. (DeJarnett v. Tickameyer, 40 S. W.(2d) 686, 328 Mo. 153; Bowers v. Kansas City Public Service Co., 41 S. W. (2d) 810, 328 Mo. 770; Coble v. The Scullin Steel Co. (1932 Mo.App.) 54 S. W. (2d) 777; Whitehead v. Farmers Fire Insurance Co., 60 S. W.(2d) 65, 227 Mo. App. 891.) The meaning to be given to statutory terms will be determined from the context of the statute. (Mudelman v. Thimbles Inc., 40 S. W.(2d) 475, 225 Mo. App. 553.) In determining the true meaning of any provision of a statute, resort will be had to all parts thereof. (Morgan v. Jewell Construction Co. 91 S. W. (2d) 638, 230 Mo. App. 25.)

Since the established rules of construction applicable to statutes apply to the construction of constitutional provisions, the question before us must be determined by the above canons of construction. (State ex rel. Buchanan County v. Imel, 242 Mo. 293, 146 S. W. 783; C.J.S. Vol. 16, Sec. 15, page 51.

Throughout the article on judicial departments in the Constitution of 1945, we find a clear indication that the term "courts of appeals" denotes an entirely different court than the probate court. Section 1 of Article V of the Constitution of 1945 sets out the judicial powers of the state, and in enumerating the courts wherein this power lies, it lists courts of appeals and probate courts separately. In Section 4, supra, the Constitution groups courts of appeals with the Supreme Court and the Circuit Courts and grants them superintending powers over inferior courts. This superintending function of the courts is one which is peculiar to the

superior courts and the probate court has never had, nor does the constitution now give it, general superintending power over any other court. In Section 10 of Article V of the Constitution of 1945, there is a provision for an appeal or for transfer to the Supreme Court of the state on certiorari from the court of appeals. In using the term "courts of appeals" here, the convention obviously was referring to the intermediate appellate courts only. In Section 13, supra, the Constitution provides that the courts of appeals shall be composed of three judges each. This again indicates that the intermediate courts were meant by the term "courts of appeals" and that the probate courts could not be considered within the meaning of that term, since the probate court consists of but one judge. In Section 23, supra, the Constitution provides for the terms of all judges of the state, and here again the judges of the courts of appeals and the judges of the probate and magistrate courts are listed separately and different terms are provided for each. In Section 26, supra, the Constitution provides that appellate and probate courts shall appoint their own clerks. Again, this listing of the two types of courts separately, we think, indicates that the appellate courts and probate courts are two entirely different courts within the meaning of the Constitution and that the probate court cannot be considered an appellate court within the meaning of the term "courts of appeals."

CONCLUSION

It is, therefore, the opinion of this department that the provision of Section 25 of Article V of the Constitution of 1945 providing that judges of the Supreme Court and courts of appeals shall not continue to hold office after attaining seventy five years of age does not apply to probate judges of the state.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

SNC:mw