

COUNTY COURTS: A county court may change its county judicial  
COUNTY COURT districts by formal court order.  
DISTRICTS:



June 19, 1952

6-19-52 ✓

Honorable Charles V. Barker  
Prosecuting Attorney  
Polk County  
Bolivar, Missouri

Dear Sir:

We are in receipt of your opinion request which is as follows:

"In view of the fact that the population has shifted considerably in Polk County in recent years, the two districts from which the associate judges of the County Court are elected are very unequal in population, and the County Court purposes to redistrict the county so as to have a more fair representation on the court.

"The judges of this county brought the question up at the convention of county judges in Jefferson City, and no one there apparently knew what to do concerning the matter.

"The only authority I find on the question is Section 47.010 and Section 49.010 in the Revised Statutes of 1949, and I cannot find where the latter section has been construed regarding this question. I would therefore like to have your opinion on the following question:

"Does the County Court have the authority to redistrict the county as occasion requires? If not, who does have that authority? Also, please state what procedure should be taken in redistricting."

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We agree with you in your letter when you state that Section 47.010 and Section 49.010, RSMo 1949, are the sections of the statute in regard to your question. We believe that both of these sections apply - Section 47.010 in regard to the division of the county into townships and Section 49.010 in regard to determining the districts of the county court. Since these two seem to be the only reference that the statutes of our state make to this kind of an arrangement for county government, it is evident that the county government should be organized in accordance with them. We are purposely omitting the new forms of county reorganization for counties of other classes. It is naturally of importance in the matter of re-districting a county for county judgeships to consider first the method of dividing townships, that the county court districts follow the statute, and be, in the words of the statute, "two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships." The above reference is to Section 49.010, RSMo 1949.

In regard to statutory construction of Section 47.010, supra, in the division of a county into townships by the county court, our Supreme Court held in regard to a previous similar statute in *State ex inf. McKittrick v. Tegethoff*, 338 Mo. 328, l.c. 330, 331, as follows:

"\* \* \* Section 12041, Revised Statutes 1929, is as follows:

"Each county court may divide the county into convenient townships, and as occasion may require erect new townships, subdivide townships already established, organize better township lines, and may, upon the petition in writing of not less than twenty-five per centum of the legally qualified voters of each township affected, as such vote was cast in the last preceding general election for the office receiving the greatest number of votes in the township or townships affected, consolidate two or more existing townships, into one township, or otherwise reduce the number of townships, or change the boundary lines thereof, as may be deemed advisable."

At l.c. 331, 332, the Court interpreted the statute, as follows:

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"1. Construing the section by its language and history we think it clear the first part thereof deals with: the original division of a county into townships after its organization; the subsequent erection of new townships, and the subdivision of townships, thereby increasing the number of townships; and the changing of boundary lines whether the number of townships be increased or remain the same. The statute has never required a written petition for this during the entire history of the State. The latter part of the section, which used to call for a petition signed by at least fifty residents of the townships affected and now requires the signature of twenty-five per cent of the qualified voters, etc., contemplates a reduction in the number of townships by consolidation or otherwise. That is what the title of the act said when this part of the section was added by amendment in 1909."

Other incidences of constructing this statute and in regard to the authority of the county court in such matters are found in State ex rel. Sears v. Hall, 28 S.W. (2d) 1026, State v. Dawson, 225 S.W. 97, and Houck v. Little River Drainage District, 154 S.W. 739.

Section 49.010, RSMo 1949, is quoted at length for the purpose of this opinion and is as follows:

"The county court shall be composed of three members, to be styled judges of the county court, and each county shall be districted by the county court thereof into two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships."

We have found few cases in which this section or the method of county organization as described in this section has come to the attention of the court. However, in an early case of State ex rel. Attorney General, relator, v. Gilbreath, the Supreme Court of Missouri had before it the following provisions of the General Statutes of 1865 (Wagner Statutes, 439) which we quote from 48 Mo., l.c. 110:

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"The question is thus raised whether the action of the County Court in districting the county had any such effect as is claimed by respondent. The section of the statute referred to is as follows:

"Section 1. The County Court shall be composed of three members, to be styled "the justices of the County Court," and each county, where the court is composed of three justices, may be districted by the County Court, if they think the good of the county will be promoted thereby, into three districts, as near equal in population as practicable without dividing municipal townships; and each district shall elect and be entitled to one of the justices of the County Court."

This case did not involve the means of redistricting the county court or the method of doing it. However, the Statutes of 1865 was similar in its direction to the county court in Section 49.010, supra. The county court in the Gilbreath case had been reorganized. It was presumably organized under the directions of the Statutes of 1865 and the method of reorganization was not attacked. The Court discussed the reorganization without disapproval. The question before the Court was concisely this: When the county court redistricted the county into judicial districts, did it result in all three county judgeships being vacant? The Court determined that it did not. It simply held at l.c. 112, as follows:

"\* \* \* Under this construction the present justices will hold their statutory term, an election of one justice will be had every two years, and each district will elect one, thus affirming the material provisions of the statute. It is objected that two of the districts are deprived of their right to elect. True, until the terms of the justices already elected shall expire. No statute providing for a future election to any office already filled can take effect until the termination of the pending term, unless the term is expressly cut off. That is not the real difficulty

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in this case, but it is in the assignment of the justices, thus determining in which district the first district election should be had. But such assignment being necessary to carry into effect the power to district, the power to make it should be implied from the one expressly granted. \* \* \*"

We have found no other guiding light of judicial construction of the statutes to direct us in the reorganization of a county. It has been accomplished many times among the 114 counties of Missouri and has seldom reached the judicial scrutiny of our appellate courts. Section 49.170, RSMo 1949, provides for terms of the county court. It is, in part, as follows:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient; \* \* \*"

Absent further statutory direction, it appears that in the event the county court at a regular term meeting determines and makes a formal order which redistricts the county in accordance with Section 49.010, supra, the redistricting would be legal and proper.

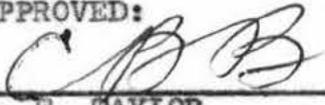
#### CONCLUSION

Therefore, it is the opinion of this department that a county court may change its county judicial districts by a formal order of the county court at any of its regular term meetings.

Respectfully submitted,

JAMES W. FARIS  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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