

CIRCUIT COURTS: Jackson County circuit court, en banc, is without authority to order transfer of circuit judge from either of two divisions of said circuit court required to sit at Independence, to try causes pending in the several divisions of said circuit court sitting in Kansas City. Said circuit court, en banc, may designate divisional judges sitting at Independence as presiding or assignment judge of circuit court of Jackson County.

March 19, 1958



Honorable Floyd L. Snyder, Sr.  
Member, Missouri House of Representatives  
521 South Noland Road  
Independence, Missouri

Dear Mr. Snyder:

This opinion is rendered in reply to your recent inquiry reading as follows:

"An opinion is requested of your office on the following question:

Can the circuit court of Jackson County en banc, in view of the provisions of Nos. 478.463 to 478.507, RSMo 1957 Supp., transfer a judge of divisions 12 or 13 from Independence to sit in Kansas City either to try causes or to act as presiding or assignment judge when the judge from the Independence division is not transferred to sit for or to replace another judge of one of the Kansas City divisions.

"In this connection may I call your attention to the following: Section 478.463, RSMo 1957 Supp., reads in part:

'The circuit court of the county of Jackson, comprising the sixteenth judicial circuit, shall be composed of thirteen divisions and a judge shall be selected to preside over each division. Divisions one to eleven shall sit at the city of Kansas City and divisions twelve and thirteen shall sit at the city of Independence.' (Underlining supplied)

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"Section 478.473, RSMo 1957 Supp., gives the court en banc the authority to transfer civil cases among the several divisions but says nothing about the transfer of a judge. This is also true of No. 478.507, RSMo 1957 Supp. Does this authority to transfer cases from Independence to Kansas City carry with it the right to transfer the judge of Divisions Nos. 12 or 13 from Independence to Kansas City?"

"I call your attention also to State ex rel Louis Walker, Jr. vs. John R. James, Judge, in which the Supreme Court issued, on June 30, 1955, a preliminary rule of prohibition, which preliminary rule provides that the respondent judge might proceed with the trial of the State of Missouri vs. Walker in his own division at Independence, or in the alternative show cause why the trial of the case by him in Kansas City should not be prohibited. The respondent judge failing to make a return to this preliminary rule of prohibition, it was made absolute on September 30, 1955. Is this rule of prohibition pertinent to the question herein involved.

"An early reply will be appreciated."

At the very outset, we construe the request for this opinion as conceding that the transfer of judges among the different divisions of the circuit court of Jackson County may become an accomplished fact by invoking appropriate Rules of the Supreme Court of Missouri and applicable constitutional provisions.

The right to exercise judicial power is treated in the following language from Rhodes v. Bell, 230 Mo. 138, l.c. 149:

"That the Legislature has the power to fix the times for holding the regular terms of court and that this court has held that the judicial power can only be exercised at the time and places prescribed by law, is the recognized law of this State."

Sections 478.463 to 478.510 RSMo 1949, as amended, have particular application to Jackson County, Missouri, comprising the sixteenth judicial circuit in Missouri. Section 478.463 RSMo 1949, Cum. Supp. 1957, provides:

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"The circuit court of the county of Jackson, comprising the sixteenth judicial circuit, shall be composed of thirteen divisions and a judge shall be selected to preside over each division. Divisions one to eleven shall sit at the city of Kansas City and divisions twelve and thirteen shall sit at the city of Independence. The divisions of said circuit court sitting at Kansas City heretofore existing shall continue as divisions one to nine thereof and the Independence division heretofore existing shall hereafter be designated division twelve of the circuit court. Nothing herein contained shall affect the tenure or rights of succession of any judge heretofore serving in any division of said circuit court."

The foregoing statute is positive in directing that divisions one to eleven shall sit at the city of Kansas City, and that divisions twelve and thirteen shall sit at the city of Independence. While the circuit court of Jackson County is divided into thirteen separate and distinct divisions, we do notice the following language from *Acy v. Inland Security Company*, 287 S.W. 2d 347, 1.c. 350:

"The circuit court of Jackson County, although composed of several divisions, constitutes but one court."

Section 478.473 RSMo 1949, Cum. Supp. 1957, spells out the powers of the circuit court of Jackson County when sitting en banc, in the following language:

"1. The court en banc shall have power to frame and enact such rules for the numbering of civil cases now pending, or hereafter brought therein, for the proper distribution of civil cases for trial and disposition among the several divisions of said court at Kansas City, and for the transfer of civil cases to and from each of the several divisions at Kansas City and the divisions at Independence, which rules may in like manner be changed from time to time, as may be found necessary.

"2. Said judges of said court en banc, or a majority of them may in like manner make, from time to time, such other rules for said court as may be agreeable to the usages and principles of law and not inconsistent with the code of procedure and the constitution and laws of this state.

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But the court en banc shall have no power to review any order, decision or proceeding of the court in division."

A close reading of Section 478.473, supra, discloses that authority is vested in the circuit court of Jackson County, when sitting en banc, to assign and transfer causes to the different divisions of said court. We also note in said statute an absence of any language giving the circuit court en banc any authority to order the transfer of a judge from divisions twelve and thirteen in order that he may "sit at the city of Kansas City," as such language is used in Section 476.463 RSMo 1949, Cum Supp. 1957, for the purpose of trying causes assigned to any of the eleven divisions of said circuit court required to sit at the city of Kansas City. We find no provision in Missouri's Constitution of 1945 authorizing the circuit court en banc of Jackson County to order the transfer of circuit judges selected to sit at the city of Independence. Absent constitutional and statutory authority, it must be concluded that the circuit court en banc of Jackson County is without authority to order the transfer of a circuit judge from either of the two divisions of said court sitting at Independence to try causes pending in the several divisions of said court sitting at Kansas City, Missouri.

We next consider that phase of the inquiry touching authority of the circuit court en banc to order either of the judges of the two divisions of said court sitting at Independence to act as "presiding or assignment judge" of the Jackson County circuit court. Authority for the circuit court of Jackson County to sit en banc is found in Section 478.470 RSMo 1949, Cum. Supp. 1957, reading as follows:

"The said circuit court may sit, both en banc and separately, in the several divisions in said court in said Kansas City, as the business thereof may require. When the court sits as a court en banc, one of the judges shall act as presiding judge, as the rules of the court shall direct."

The "said circuit court" referred to in Section 478.470, quoted supra, necessarily refers to the circuit court of thirteen separate divisions constituted by Section 478.463 RSMo 1949, Cum. Supp. 1957, quoted in the forepart of this opinion. We find no language in the statutes being construed, and heretofore cited, which indicate that the circuit court en banc of Jackson County is to be made up of fewer than all judges in the thirteen separate divisions. With the circuit court en banc so constituted, it is not reasonable or feasible to permit parts of the whole to escape duties imposed upon the court en banc by statute but the court en banc, under Section 478.470, Cum. Supp. 1957, can only sit in Kansas City. To require a judge of either of the two divisions in Independence to serve as presiding judge of the court

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en banc or assignment judge thereof should not be considered as violating the provisions of the statute requiring such judges to sit at the city of Independence in the trial of causes assigned to those divisions. The designation of a judge of one of the divisions sitting at Independence as assignment judge should not be considered as authorizing such judge to sit for the trial of any causes.

Sections 478.463, 478.470 and 478.473, RSMo Cum. Supp. 1957, on their face suggest ambiguity, and it is suggested that desired clarification can best be obtained by legislative amendment of said statutes.

#### CONCLUSION

It is the opinion of this office that the circuit court, en banc, of Jackson County, Missouri, is without authority to order the transfer of a circuit judge from either of the two divisions of said court, required to sit at the city of Independence, to try causes pending in the several divisions of said court sitting in Kansas City, Missouri. It is further ruled that the circuit court en banc of Jackson County may designate either of the divisional judges sitting at the city of Independence as presiding or assignment judge of the circuit court of Jackson County without violating statutory provisions requiring such judges to sit at the city of Independence in the trial of causes assigned to those divisions.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton  
Attorney General

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