

Change of Venue in Criminal Cases Before a Justice of the Peace.

September 23, 1933

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Mr. C. Arthur Anderson,  
Prosecuting Attorney,  
Clayton, Missouri

Dear Sir:

We acknowledge receipt of your letter of September 12, 1933, in which you state and inquire as follows:

"We have a question that arises constantly in our County in connection with the application for Change of Venue for misdemeanor cases in the Justice Courts.

This County has five townships and about twenty justices scattered about the County; this number is not constant because appointments are being made from time to time. The practice of some attorneys for the defense is to file a Change of Venue application and then list every justice but one as being prejudiced and in that way they practically designate their OWN judge, which by a strange co-incidence seems to be the same justice.

We would like to have you kindly refer this question of the defendants' practice, as above set out, to one of your assistants for consideration and answer and also with your suggestion as to what means, if any, we may employ to defeat or embarrass this practice.

With highest personal regards, and thanking you for this and the many favors in the past."

Section 3430 R. S. 1929, reads as follows:

"If such affidavit be filed, the change of venue must be allowed, and the justice must immediately transmit all the original papers and a transcript of all his docket entries in the case to the next nearest justice in the township, if

if there be one, unless the party asking for a change of venue shall, in his affidavit, state that the other justice in the township is a material witness for him, without whose testimony he cannot safely proceed to trial, or that he is near of kin to the injured party or prosecuting witness, stating in what degree, or that he cannot have a fair and impartial trial before such justice in the township, in which case, then to a justice in some other township in the county, or, if the change be allowed on account of the bias or prejudice of the inhabitants of the township, then to a justice in some other township in the county; and the justice to whom such case shall be sent shall forthwith proceed with the same in like manner as if said cause had been originally brought before him. No more than one change of venue in the same case shall be allowed."

In State ex rel v. Watkins, 212 Mo. App. 1. c. 511, the St. Louis Court of Appeals, in construing what is now section 3430 Sup. said:

"Appellant's able counsel stand on the strict letter of the statute, section 3775 R. S. 1919 (now 3430) and there is support therein for their contention; but when we take into consideration the contemporaneous construction; the policy of the law and the statute requiring that a misdemeanor, when prosecuted in a justice of the peace court, shall be in the township where it is alleged to have been committed, unless taken out on a change of venue; and also the object and purpose of the law providing for additional justices of the peace, we are of the opinion that the change of venue in the cause at bar should have gone to the remaining qualified justice in Little Prairie Township. A cause, in a justice of the peace court, civil or criminal in our opinion, cannot be sent out of a township on change of venue, unless all of the justices are disqualified or unless the affidavit goes against the inhabitants."

From the above case, it clearly appears that a defendant may disqualify as many justices in a township as he desires, however if one is left the case must be sent to the one remaining justice who is not disqualified in said township. We find no authority for disqualifying justices of other townships in the same affidavit.

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We suggest that if in the future, a defendant by affidavit, undertakes to disqualify all the justices of the county, save one, and in that way selects the forum, the State should have the justice before whom the case is pending refuse to send the case to said justice not disqualified and then the defendant could institute his case in mandamus against said justice so refusing and test the question in the courts.

Yours very truly,

W. W. Barnes

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Assistant Attorney General

APPROVED

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Attorney General.