

Sec. 938

(JUSTICES' COURTS - Applicability of R.S. 1929/to actions in justices' courts so as to allow continuances when party or counsel is at session of General Assembly as member thereof.)

12-2

November Twenty-Ninth,
1933.



Honorable Arthur S. Shaw,
Justice of the Peace,
308 Thompson Avenue,
Excelsior Springs, Missouri.

Dear Sir:

A request for an opinion has been received from you under date of November 11, 1933, such request being as follows: "In your opinion does Section 938, Revised Statutes of the State of Missouri, 1929 apply to actions in Justice Court?"

Revised Statutes of Missouri, 1929, Section 938, provides as follows:

"In all suits at law or in equity or in criminal cases pending in any court of this state at any time when the general assembly is in session, it shall be a sufficient cause for a continuance if it shall appear to the court, by affidavit, that any party applying for such continuance, or any attorney, solicitor or counsel of such party is a member of either house of the general assembly, and in actual attendance on the session of the same, and that the attendance of such party, attorney, solicitor or counsel is necessary to a fair and proper trial or other proceeding in such suit; and on the filing of such affidavit the court shall continue such suit and any and all motions or other proceedings therein, of every kind and nature, including the taking of depositions, and thereupon no trial or other proceedings of any kind or nature shall be had therein until the adjournment of the general assembly, nor for ten days thereafter. Such affidavit shall be sufficient, if made at any time during the session of the general assembly, showing that at the time of making the same such party, attorney, solicitor or counsel is in actual attendance upon such session of the general assembly."

There have been no decisions in this state as to whether or not the above section applies to courts of justices of the peace, but the statute itself expressly uses the phrase "in any court of this state", which would certainly by its language include a justice court, and like-

-2-

Honorable Arthur S. Shaw,
November 29th, 1933.

wise the purpose of the statute would seem to apply equally to a justice court as to a court of record or other court, because the statute is a legislative declaration that any party to a case or his attorney who is serving the public as a member of the General Assembly by being in attendance at a session thereof, should not have his private interests prejudiced thereby by being forced to proceed with litigation which would conflict with attendance at the General Assembly.

Revised Statutes of Missouri, 1929, Sections 2259 and 2260, deal with continuances in justices' courts, and contain nothing which would prevent Section 938 from applying to justices' courts.

It is our opinion that Revised Statutes of Missouri, 1929, Section 938, applies to actions in the courts of justices of the peace in this state.

Very truly yours,

E. H. MILLER,

Assistant Attorney General

APPROVED:

Attorney General.

KSM/10.