

OFFICERS OF COUNTY:

One cannot be candidate for both the office of Justice of the Peace and Probate Judge at same time.

September 18th, 1934.



Mr. John M. Bragg,  
Prosecuting Attorney Douglas County,  
Ava, Missouri.

Dear Sir:-

We have your letter of August 25, 1934, in which was contained a request for an opinion as follows:

"Mr. Wm. Fletcher of Douglas County, Missouri, has received the nomination for Probate Judge and also for Justice of Peace of Benton Township. He contends that he can hold both offices as the office of Justice of Peace is excepted from the provision of Section 18 of Article 9 of the Constitution of the State of Missouri, however, Section 10244 of R. S. Mo. that:

"No person shall accept a nomination to nor be published as a candidate for more than one office."

"I would appreciate very much your opinion as to whether or not his name should be printed on the ticket for the general election as a candidate for both offices."

Section 10244, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 10244. CERTIFICATE TO CONTAIN ONE NAME, etc.- No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating more than one nominee for each office to be filled; and no person shall accept a nomination to nor be published as a candidate for more than one office. (Underlining ours).

The above quoted statutory section is very plain to the effect that one shall not be a candidate for more than one office at the same time, hence, we have no choice but to hold that Mr. Fletcher does not have the right to have his name placed on the ticket for more than one of the offices mentioned. The office of probate judge is, of course, a constitutional office and in the case of State vs. Pollock (276 S. W. 20, l.c. 21) the office of justice of the peace was held to be such also.

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We do not here pass on the question of whether or not a man already holding one of the aforesaid offices could legally run for or hold the other one in addition thereto. We merely say that under the section above quoted he cannot be a candidate for both offices at the same time.

In view of the above, we need not consider the constitutional section referred to by Mr. Fletcher. It may be well to add, however, that in the case of *Nickleson vs. City of Hardin*, 221 S. W. 358, l.c. 360, that section of the constitution was held to apply only to cities and counties having a population of more than two hundred thousand inhabitants.

Mr. Fletcher's name, therefore, should not be printed on the ticket for the general election as a candidate for both offices.

Very truly yours,

CHARLES M. HOWELL, Jr.,  
Assistant Attorney-General.

CMHjr:MB

APPROVED:

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Attorney-General