

CONSTABLE: Subject to Ouster on changing residence from
Township.

9-17

September 9, 1935.

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Honorable Lewis A. Duval
Prosecuting Attorney
Macon County
Macon, Missouri

Dear Sir:

We acknowledge your request for an opinion dated
August 31, 1935, which reads as follows:

"At the November Election Armel Burke was elected as constable of Valley Township in Macon County Missouri and qualified as such. In March he farmed some land in Valley Township but there being no house available for his use on the land he moved his family about half a mile south of the township line into Callao Township with the intention he says of moving back into Valley Township this fall. The question has arisen as to whether he is still a constable.

"I find no decision on this matter in Missouri Reports but have attached a brief giving you such information as I have in the matter. Will you kindly give me your opinion on the matter as soon as convenient?"

Your Constable was elected to a term of office and under the qualifications as provided in Section 11748 R. S. Mo. 1929, which reads as follows:

"At the general election to be held in 1920, and at each general election every two years thereafter, the qualified voters of each township in every county in this state shall elect a constable, who shall be a resident of the township for which he is elected.

and who shall hold his office for two years and until his successor be elected, and qualified; provided, that in townships that now contain or may hereafter contain a city of over one hundred thousand and less than five hundred thousand inhabitants and which has been or may hereafter be divided into justice of the peace districts, the constabulary districts of said township shall be made to conform to and be coextensive with such justice districts, and the qualified voters in each constabulary district shall elect a constable at the general election in the year nineteen hundred and twenty-two and every four years thereafter, and all constables now in office in said constabulary districts shall hold their respective offices, upon being appointed and commissioned by the county court of the said county in which said districts are located, until the general election in the year nineteen hundred and twenty-two, and until their successors are duly elected and qualified; and in case of vacancy in said office, the county court shall appoint a constable who shall hold office until the next general election for constables; and every constable elected or appointed in said constabulary districts, in addition to his other qualifications as herein provided, shall be a resident of the district for which he is appointed or elected. The judges and clerks of election shall certify the result thereof to the clerk of the county court, and in case of a tie or contested election, it shall be determined by that tribunal."

Article XIV, Section 7, Missouri Constitution reads as follows:

"The General Assembly shall, in addition to other penalties, provide for the removal from office of county, city, town and township officers, on conviction of

willful, corrupt or fraudulent violation or neglect of official duty. Laws may be enacted to provide for the removal from office, for cause, of all public officers, not otherwise provided for in this Constitution."

Section 11202 R. S. Mo. 1929, provides when an officer shall forfeit his office and reads as follows:

"Any person elected or appointed to any county, city, town or township office in this state, except such officers as may be subject to removal by impeachment, who shall fail personally to devote his time to the performance of the duties of such office, or who shall be guilty of any willful or fraudulent violation or neglect of any official duty, or who shall knowingly or willfully fail or refuse to do or perform any official act or duty which by law it is his duty to do or perform with respect to the execution or enforcement of the criminal laws of the state, shall thereby forfeit his office, and may be removed therefrom in the manner hereinafter provided."

57 Corpus Juris, page 733, Section 9 has this to say about the presumption of eligibility to the office of Constable.

"The eligibility of a person is not established by the fact that he has been elected by the people, or has been issued a certificate of election, or has taken the oath of office and given an official bond as sheriff, or has received a commission as such officer."

57 Corpus Juris, page 753, Section 62, has this to say about common law eligibility to the office of Constable.

"At common law, and by virtue of the express provisions of some constitutions and Statutes, residence in the district in which he is to serve is necessary to the eligibility of a person for the office of constable."

CONCLUSION.

We find nothing in the Constitution or Statutes of the State of Missouri, that would disqualify a duly elected and qualified constable from his office, because after election and qualification he moved his family from the township in which he was elected and qualified. If this constable be disqualified from holding his office it is by virtue of the common law which makes continued residence in the township necessary to eligibility to said office. It is admitted that this constable moved out into another township with his family and with the intention of making his home in the foreign township until fall. It is explained that he intends to move back to the township of his office in the fall. The physical act of staying out of Valley Township until fall, accompanied with the mental determination to make his home without the township until fall apparently amounts to a change of residence without the township, and might subject the constable to an ouster proceeding under the provisions of Section 1618, R. S. Mo. 1929.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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