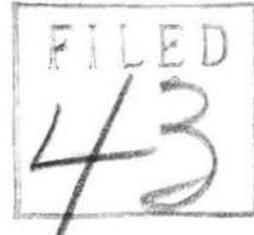


The election and number of Justices of the Peace should be governed by Sections 12268 and 12269, and Section 2136 R. S. Mo. 1929 does not apply to the election of Justices of the Peace in counties having township organization.

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May 10, 1935



Honorable Glen W. Huddleston
Prosecuting Attorney
Carrollton, Missouri

Dear Sir:

This Department is in receipt of your letter of April 12 requesting an opinion based on the following facts:

" You will find inclosed sample ballots of the township election held in Carroll County, Missouri March 26th, 1935, the ballots were printed on separate pieces of paper just like the samples that are inclosed.

As you no doubt know Carroll County is under Township organization, and therefore, I do not think section 2136, R. S. Mo. 1929 would have anything to do with the number of Justices to be elected in Carrollton township. If you need any additional information, please, let me know at once and I will be glad to send to you as I am anxious to get your opinion on this question as soon as possible."

Carroll County being under township organization, the election of township officers is authorized under Section 12268, which is as follows:

"There shall be chosen at the biennial election in each township one trustee, who shall be ex officio treasurer of the township, one township collector, and one township clerk, who shall be ex officio township assessor, one constable, two members of the board, and two justices of the peace: Provided, the same persons may be elected members of the board and justices of the peace, at the same election, and hold both offices; also the same person may be elected constable and collector at the same election and hold both offices at the same time, by taking the proper oath of each office and giving the bond required by law."

The following section, 12269, provides for an additional Justice and is as follows:

"In all townships having a population of over two thousand inhabitants, it shall be lawful for the qualified voters thereof to elect an additional justice of the peace for every two thousand inhabitants until the population reaches six thousand, after which the number of justices shall not be increased. Said additional justices shall be elected and commissioned and shall have the same powers and perform like duties as other justices of the peace have and perform by law."

You do not state in your letter the population of the township. By the terms of Section 12268 every township should elect two justices of the peace. If the township in question contains more than two thousand inhabitants then an additional justice may be elected until the population reaches six thousand.

May 10, 1935

Section 2136 Revised Statutes Missouri 1929, mentioned in your letter, is under Chapter 9 of Article VII, the title of the Chapter being " Courts not of Record - Justice Courts - Organization and Procedure."

In the case of State ex rel. v. Powles 136 Mo. 376, which related to the appointment of an additional justice of the peace in Howell County, the court said:

"An additional justice of the peace to which a town or city of over two thousand inhabitants may be entitled, under Revised Statutes, 1889, section 6090, is a township officer governed by the general law relating to justices of the peace."

The legislature has passed special laws and chapters relating to elections and the government in counties under township organization. In conducting the election, Section 12270 states,

"Said township election shall in all things conform to the general law concerning elections for state and county officers, so far as the same is consistent with the provisions of this chapter."

CONCLUSION

We are of the opinion that the manner of choosing justices of the peace should be governed according to the terms of Section 12268 and Section 12269, in Carroll County, and that Section 2136 has no applicability to the election of the justices and does not apply to the number of the justices of the peace. As to whether or not the township in question is entitled to three justices, as stated

Honorable Glen W. Huddleston -4-

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before, we can not answer this question for the reason that you failed to state the population of the township in question.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General.

OWN:LC