

COUNTY COURT: Legal procedure for the removal of the judges of the county court from office.

March 8, 1935.



Dr. W. F. Schlicht  
Niangua  
Missouri

Dear Sir:

This department is in receipt of your letter of February 27th wherein you state as follows:

"I wish to ask you for a legal opinion on the following questions:

"First, Can the legal qualified voters of the county by petition ask for a re-call election of the present members of the county court.

"Second, Upon sufficient charges to justify such an election.

"Third, What per cent of the voters are required to petition for a re-call election.

"Fourth, If not permitted to vote on a re-call election what procedure would be necessary to remove the court from office, upon the grounds of sufficient charges."

The first three questions contained in your letter may be answered simply by stating that the State of Missouri has not provided any legal procedure whereby the qualified voters of a county may petition for a special election to vote on the re-call of the members of the county court.

Article VI, Section 36, page 116 of the Constitution of Missouri provides that,

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

It will be noted that a county court is a court of record in the State of Missouri.

Section 2072, R. S. Mo. 1929, sets out the composition of the county court thus:

"The county court shall be composed of three members, to be styled judges of the county court, of whom the probate judge may be one, and each county shall be districted by the county court thereof into two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships."

Section 2073, R. S. Mo. 1929, provides the election of, and tenure of office as follows:

"At the general election in the year eighteen hundred and eighty, and every two years thereafter, the qualified voters of each of said districts shall elect a county court judge, who shall hold his office for a term of two years and until his successor is duly elected and qualified; and at the general election in the year eighteen hundred and eighty-two, and every four years thereafter, the presiding judge of said court shall be elected by the qualified voters of the county at large, who shall hold his office for the term of four years and until his successor is duly elected and qualified. Each judge elected under

the provisions of this article shall enter upon the duties of his office on the first day of January next after his election."

It will further be noticed that the judges of the county court are elective officers.

Article VII, Section 1 of the Constitution of Missouri, sets out the officers who are liable to impeachment, and states that,

"The Governor and Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney-General, and members of the State Board of Education, Judges of the Supreme Court, the Courts of Appeals and the Circuit Courts shall be liable to impeachment for high crimes or misdemeanors and for misconduct, habits of drunkenness or oppression in office.

Judges of the county court are specifically omitted, and hence are not subject to impeachment.

Section 11202, R. S. Mo. 1929, provides for the removal of county officers, 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."

Section 11203, R. S. of Mo. 1929, sets out the duty of the prosecuting attorney relative to a complaint against county officers thus:

"When any person has knowledge that any official mentioned in section 11202 of this article has failed, personally, to devote his time to the performance of the duties of such office, or has been guilty of any willful, corrupt or fraudulent violations or neglect of any official duty, or has knowingly or willfully failed or refused to perform any official act or duty which by law it was his duty to do or perform with respect to the execution or enforcement of the criminal laws of this state, he may make his affidavit before any person authorized to administer oaths, setting forth the facts constituting such offense and file the same with the clerk of the court having jurisdiction of the offense, for the use of the prosecuting attorney or deposit it with the prosecuting attorney, furnishing also the names of witnesses who have knowledge of the facts constituting such offense; and it shall be the duty of the prosecuting attorney, if, in his opinion, the facts stated in said affidavit justify the prosecution of the official charged, to file a complaint in the circuit court as soon as practicable upon such affidavit, setting forth in plain and concise language the charge against such official, or the prosecuting attorney may file such complaint against such official upon his official oath and upon his own affidavit."

The above section is not the only legal procedure for the removal of the judges of County Courts. Article VI, Section 41, page 117 of the Constitution of Missouri provides still another method in case of inability, etc. and reads thus:

"In case of the inability of any judge of a court of record to discharge the duties of his office with efficiency, by reason of continued sickness, or physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each house concurring, with the approval of the Governor, to remove such judge from office; but each house shall state on its respective journal the cause for which it shall wish his removal, and give him notice thereof, and he shall have the right to be heard in his defense, in such manner as the General Assembly shall by law direct."

We are of the opinion that the above methods constitute the legal procedure for the removal of the judges of county court from office.

Respectfully submitted,

WM. ORR SAWYERS  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

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