

OFFICERS: Any officer-elect may assume the duties of
office on Sunday, January 1, 1939, if he has
ELECTIONS: taken the oath of office prior thereto.

December 23, 1938

17-77



Honorable Maurice L. Mushlin
2nd Associate Prosecuting Attorney
Municipal Courts Building
St. Louis, Missouri

Dear Sir:

We have received your letter of December 16, 1938, which reads in part as follows:

"Sometime ago when Judge James P. Finnegan met General McKittrick he inquired as to whether it was permissible under the law for an official whose term of office began on January 1st to take office on that day when that day was a Sunday.

"Since there are a number of offices, including ours, in which the terms begin on January 1st, 1939, and as January 1st, 1939 falls on a Sunday, I would at the request of Judge Finnegan formally request an opinion from your office on this matter.

"I would point out Section 1863 of the Revised Statutes of Missouri, which prohibit a Court from holding session or transacting any business other than to receive a verdict or to discharge a jury.

"I believe that this is the only relevant statute, and that therefore an official could not take on January 1st, 1939.

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"Judge Finnegan would likewise like to know if it would be permissible to take office or be sworn in on December 31st, New Year's Eve."

We are enclosing a copy of an opinion dated December 22, 1938, and addressed to the Honorable Carl F. Wymore, Prosecuting Attorney of Cole County, Missouri, which holds that the county court cannot convene on Sunday, January 1, 1939, for the purpose of administering oaths of office to newly elected officers whose terms are to commence as of that date. That opinion is based principally on Section 1863, R. S. Mo. 1929, which makes it unlawful for any court to transact any business on Sunday except for certain limited and designated purposes. The opinion also holds that there is nothing to prevent the oath of office from being administered on a date prior to Sunday, January 1, 1939, or on a date subsequent thereto; that Article XIV, Section 6, of the Constitution of Missouri merely requires that the oath of office shall be subscribed to before any officer enters upon his duties.

Consequently, if any of the officials who are by law to assume office on January 1, 1939, have taken the oath of office prescribed by the Constitution on a date prior thereto, such officer would then be the lawful incumbent on January 1, 1939.

CONCLUSION

Any officer who is by law to assume the duties of his office on Sunday, January 1, 1939, shall be entitled to assume the duties thereof on January 1st provided he has taken and subscribed to the oath of office provided for by the Constitution of Missouri on a date prior thereto.

Respectfully submitted

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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