

OFFICERS: County court cannot convene on Sunday,
ELECTIONS: January 1, 1939, and administer oaths of
office to newly elected officers whose terms
are to commence as of that date.

December 22, 1938

Honorable Carl F. Wymore
Prosecuting Attorney
Cole County
Jefferson City, Missouri



Dear Sir:

We have received your letter of December 14, 1938, which reads as follows:

"I would like to have an opinion on the following question:

"The law provides that all officers elected this last election shall assume office the first of January, 1939. Since the first falls on Sunday, the Judges of the County Court want to know whether or not they can administer the oaths of office on that day, or whether they should administer them the day before or the day after."

Section 1826, R. S. Mo. 1929, provides that county courts are courts of record. This statute reads as follows:

"The supreme court of the state of Missouri, the courts of appeals, the circuit courts, the county courts and the probate courts in this state shall be courts of record, and shall keep just and faithful records of their proceedings."

Section 1863, R. S. Mo. 1929, contained in the same article and dealing with courts of record, provides that no court shall transact any business on Sunday except for certain designated purposes. This section is as follows:

"No court shall be open or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury; and every adjournment of a court on Saturday shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it shall be necessary in criminal cases, to preserve the peace or arrest the offender, nor shall it prevent the issuing and service of any attachment in a case where a debtor is about fraudulently to secrete or remove his effects."

The Supreme Court of Missouri in the case of Thompson v. Sanders, 70 S. W. (2d) 1051, held that a judgment rendered on Sunday was void and of no effect. In this connection the court said, l. c. 1054:

"There is another reason why the judgment under which petitioner is imprisoned is absolutely void. It was rendered on Sunday. Our statute, section 1863, R. S. 1929 (Mo. St. Ann. sec. 1863, p. 2571), provides that no court shall transact any business on Sunday except to receive a verdict or discharge a jury."

The language of the statute that "no court shall be open or transact business on Sunday," except for certain purposes, applies with equal force to all courts, in our opinion. It is not limited by its terms to circuit courts only. Section 1863 is contained in Article 1, Chapter 9, R. S. Mo. 1929, as is Section 1826, which recites what courts are courts of record. Consequently, the statutory prohibition against courts setting or transacting any business on Sunday would apply with equal force to the Supreme Court of the State of Missouri, the courts of appeals, the circuit courts, the county courts, and the probate courts.

It is our opinion, therefore, that the terms of Section 1863 would be violated if the county court convened on Sunday, January 1, 1939, for the transaction of any business, including the administering of the oaths of office to newly elected officials who are then to assume office.

Article XIV, Section 6, of the Constitution of Missouri requires all officers under the authority of this State to take an oath of office before entering upon their duties. This section reads as follows:

"All officers, both civil and military, under the authority of this State, shall, before entering on the duties of their respective offices, take and subscribe an oath, or affirmation, to support the Constitution of the United States and of this State, and to demean themselves faithfully in office."

It is to be noted that the above constitutional provision requires only that officers shall take the oath "before entering on the duties of their respective offices." Nowhere in the Constitution does it provide the particular time the oath is to be subscribed. Likewise, we have found no statute which prescribes the time when the oath shall be taken. Consequently, since the only requirement relative to the oath is that the same shall be subscribed to before entering on the duties of the office, we can see nothing to prevent the oath being taken and subscribed to the day before any such officer is to assume his duties.

Likewise, we can see no objection to the taking of the oath on a day after Sunday, January 1, 1939. Article XIV, Section 5, of the Constitution of Missouri provides:

"In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."

The framers of the Constitution apparently had in mind that situations might often occur making it impossible for every officer-elect to "qualify" on or before the day the office is to be assumed, hence this provision that the predecessor officer should hold the office until his successor should be duly "qualified." If the oath of office should be taken on the day following January 1st, the predecessor would, of course, hold over until such time, but this does not alter the fact that the oath can be taken and subscribed to on a date subsequent to January 1st.

CONCLUSION

Our conclusion is that the county court would violate the provisions of Section 1863, R. S. Mo. 1929, if it convened on Sunday, January 1, 1939, for the transaction of any business, including the administering of the oaths of office to the newly elected officials who are authorized by law to assume office as of that date. Such acts, if then undertaken by the county court, would be void and of no effect. The oath of office can be administered either immediately before or after Sunday, January 1, 1939.

Respectfully submitted

J. F. ALLEBACH
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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