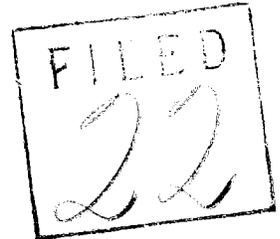


JUSTICES OF THE PEACE: Construing Section 2150, R. S.  
Missouri, 1929.

October 2, 1939

10-4



Honorable C. W. Detjen  
County Counsellor  
St. Louis County  
Clayton, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion under date of September 21, 1939, which reads as follows:

"The County Court of St. Louis County recently reorganized the township lines and established a new township, so that there are now eight instead of seven. Several questions concerning the jurisdiction of Justices of the Peace have arisen, as follows:

I.

"Carondelet Township formerly contained 31 voting precincts. About 15 of the precincts in the southern portion of Carondelet Township and 1 precinct from the former Bonhomme Township are now known as Lemay Township. The northern 16 precincts in the old Carondelet Township, and 3 precincts from the former Jefferson Township are now known as Gravois Township. Of the two Justices of the Peace

elected at large for Carondelet Township, one lives in Lemay Township and one in Gravois Township. The questions involved are:

a. Does the Justice of the Peace elected for Carondelet Township and now living in Lemay Township, have jurisdiction over all the territory formerly known as Carondelet Township, or is his jurisdiction limited to the present Lemay Township, which includes a part of the territory that was formerly Bonhomme Township; and if his jurisdiction is over the entire territory of the former Carondelet Township, has he jurisdiction under Section 2170, R. S. Missouri, 1929, over defendants residing in townships which adjoin the territory of the former Carondelet Township, but which do not now adjoin Lemay Township? The same questions, of course, arise as to the jurisdiction of the Justice of the Peace in the present Gravois Township, which now includes a portion of the former Jefferson Township.

b. Do the Justices of the Peace in Bonhomme Township and Jefferson Township have jurisdiction over the portions of their respective townships which were added to Lemay and Gravois Townships? Section 2150, R. S. 1929, pro-

vides that when a township is divided, any Justice of the Peace of the original township shall continue to discharge the duties of justice 'as if the township had not been divided.' It is the words quoted above which have caused this question to arise. If they merely mean that the change is not to affect his status as a Justice of the Peace, I take it that his jurisdiction would be limited to the new township just as though he had been elected in that township, but if they are construed to mean that as far as his jurisdiction is concerned, the township lines are to be just as they were before the change, then the respective Justices of the Peace in Lemay and Gravois Townships would have jurisdiction over all of the former Carondelet Township and defendants residing in townships adjoining it.

## II.

"At the election in November, 1938, a Justice of the Peace was elected for the town of Valley Park, under the provisions of Article 1, Chapter 10, R. S. 1929. At that time, Valley Park was in Bonhomme township. Under the new change, it is in Meramec Township. The question is, whether the Justice of the Peace elected for the City of Valley Park in Bonhomme Town-

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ship is now a Justice for the new Meramec Township or whether his jurisdiction remains as a Justice of the Peace in area comprising the old Bonhomme Township, and over defendants in townships adjoining the former Bonhomme Township, regardless of whether such townships now adjoin Meramec Township.

"The County Court has requested that I obtain an opinion from you concerning these questions."

Such a request as this requires an interpretation of Section 2150, R. S. Missouri, 1929, which reads as follows:

"When a township shall be divided, and any justice of the peace of the original township shall fall into the new township, he shall continue to discharge the duties of justice of the peace until his commission expires as if the township had not been divided."

Briefly, a determination of the legislative intent in using the following words in Section 2150, supra, will practically answer your inquiry, "he shall continue to discharge the duties of justice of the peace until his commission expires as if the township had not been divided."

Do the words "as if the township had not been divided" refer back to the duties of the Justice of the peace or does it refer to the original jurisdiction of the Justice of the Peace?

The constitutional provision creating the office of Justice of the Peace grants authority to the Legislature to prescribe the duties, determine the number of Justices of the Peace and their salary. Article VI, Section 37, of the Constitution of Missouri, reads:

"In each county there shall be appointed, or elected, as many justices of the peace as the public good may require, whose powers, duties and duration in office shall be regulated by law."

Therefore, the Legislature, as often as they deem it necessary, may amend the law pertaining to the office of Justice of the Peace so long as they do not violate the constitutional amendment creating the office of Justice of the Peace.

46 Corpus Juris, Section 30, page 934, reads as follows:

"The authority in the government which possesses the power to create an office has, in the absence of some provision of law passed by a higher authority [that is, in the case of a municipal authority, some statutory or constitutional provision; in the case of the legislature, some constitutional provision], the implied power to abolish the office it has created, or to consolidate two or more offices it has created, and since every public office is the creation of some law it continues only so long as the law to which it owes existence remains in force; hence, when such law is authoritatively abrogated, the office ceases unless perpetuated by virtue of some other legal provisions. An office which has been provided for by the constitution may not be abolished by an act of the Legislature. \* \* \*"

Section 2138, R. S. Missouri, 1929, provides that a Justice of the Peace shall hold office for a term of four (4) years, until his successor is elected and qualified, said section reads as follows:

"Justices of the Peace, as herein provided for, shall be elected at the general election to be held in eighteen hundred and eighty-two, and shall hold their offices for four years, or until their successors are elected, commissioned and qualified; but every justice of the peace now in office shall continue to act as such until the expiration of his commission, and until his successor is elected and qualified."

Section 2162, R. S. Missouri, 1929, provides under what conditions a Justice of the Peace shall be removed from office, and reads as follows:

"Every justice of the peace who shall be convicted of bribery, perjury or other infamous crime, or of any misdemeanor in office, shall be removed from office."

Therefore, it is quite evident that the Legislature never contemplated the removal of the Justice of the peace before the expiration of his term of office for any purpose other than those enumerated in Section 2162, supra.

In *Southern Ry. Co. v. Payne*, 74 S. E. 697, the court upheld a similar statutory provision, which reads as follows:

"Making or Changing Districts, Consequences. If, in laying out a new district or in changing the lines of old districts, or in consolidating or abolishing old districts, the residences of Justices of the Peace or Constables elected or appointed are included in the new district, or cut off from the district for which they were elected

or appointed, they have authority to discharge their duties for the district for which they were elected or appointed, until their terms of office expire and their successors in such districts are qualified, unless elected or appointed to the same office in the new district to which they are eligible."

The Court said, at page 698, in construing statutory provisions:

"We are of the opinion that the legislative intent, as expressed in the statute, can be given effect by placing upon the statute a construction which authorizes justices of the peace and notaries public who are ex officio justices of the peace, in any districts which have been consolidated with another district to continue to discharge the duties of their respective offices until their terms of office expire. Certainly it cannot be said that under this construction there is any clear and palpable repugnance between the statute and the constitutional provision which it is alleged to be in violation of." (This was affirmed in 75 S.E. 816.)

In *Proulx v. Graves*, 76 Pac. 1025, the law of the State of California declares that such changes in townships "shall not affect any present incumbent of the office of Justice of the Peace or Constable." Such a provision is very broad and might be construed in several ways. We consider this provision analogous to Section 2150, supra, and therefore, the decision rendered in this case should be given much weight. In this case two townships were merged. A Justice of the Peace had been elected and was holding office at the time of the merger. The court concluded:

"No declaration as to when this ordinance should take effect was necessary. If none had been made, the law would necessarily be that it would take effect 15 days after its passage, so far as it could be effective, and that it would be in force for all the purposes of the next general election, and for all other purposes, except that it could not, in the meantime, affect the terms of the then existing officers, or the jurisdiction of the then existing justices' courts." (This holding is affirmed in *In Re Stanton*, 18 Pac. (2d) 384).

In *Commonwealth ex rel. Graham v. Cameron*, 259 Pa. 209, 1. c. 211, the respondent was elected a Justice of the Peace in Harmony Township. Subsequent thereto, a part of Harmony Township was annexed to the borough of Ambridge. The respondent resided in that part of Harmony Township that was annexed. The court held that if all of Harmony Township had been annexed, the respondent's commission would not exist. The court further held that if there had been no annexation and the respondent had moved out of his township, there would be no question that he could not exercise his commission. The same is true if he voluntarily changed his residence. The result is precisely the same where the respondent has been changed involuntarily. The annexation proceeding legally removed the respondent from the township of Harmony, hence, he had no legal right to exercise the office of Justice of the Peace. The above holding would probably be applicable to the instant case if it were not for Section 2150, *supra*. The state of Pennsylvania, at the time this decision was rendered, had no such provision in its laws and this accounts for such a holding.

Apparently the purpose for enacting Section 2150, supra, was to assure the Justice of the Peace elected by the people in his respective township, of his office during the term of office as prescribed by statute, so long as he performed his duties and violated none of the provisions of Section 2162, supra. To hold that a Justice of the Peace may hold office in a district for which he was not elected by the people, but where another Justice of the Peace was elected is not consistent. The vote of the people should be indicative of their choice, and it is unreasonable to think that the General Assembly would grant the county court the power to veto the vote of the people in their respective townships.

It is true that the county court is vested with certain powers of appointing justices of the peace, for instance, when a vacancy occurs in office or when 12 or more qualified voters petition the County Court showing the Court that they lived more than five miles from the nearest Justice of the Peace in their township, the county court may appoint a Justice of the Peace who shall live in the immediate neighborhood of the petitioners, and at least five miles from any Justice of the Peace in the same township. No such authority is vested in the County Court to replace an elective officer who is carrying out the duties of his office.

If the jurisdiction of the Justice of the Peace should be changed by reason of a change of the boundaries of the township by annexation, this might, in some instances, violate Section 2136, R. S. Missouri, 1929, which provides only two justices of the peace shall be elected to certain townships. Townships may be so divided by annexation as to give three Justices of the Peace jurisdiction in one single township.

Therefore, it is the opinion of this Department that when any township is reorganized, under Section 2150, supra, the Justice of the Peace elected to hold office in said township, retains his office for

the duration of the term for which he was elected, and his jurisdiction is not disturbed. He retains the same jurisdiction in the township as if the township had not been divided. To be consistent, it is necessary that such Justice of the Peace have jurisdiction under Section 2170, R. S. Missouri, 1929, of a defendant in a township that joined the original township in which he was elected, as if no division of the township had been made. His term of office is the same as when elected, and his jurisdiction has not been decreased or increased by reason of any division of a township.

To be more specific, we will answer your request in the numerical order in which it appears in your request.

I. (a) A Justice of the Peace elected to Carondelet Township now has jurisdiction over all the territory formerly known as Carondelet Township, and it follows that said Justice of the Peace, under Section 2170, R. S. Missouri, 1929, has jurisdiction over defendants residing in townships which adjoined the territory of the former Carondelet Township at time of his election to the office.

(b) Justices of the Peace in Bonhomme Township and Jefferson Township have jurisdiction over the portions of their respective townships which were added to Lemay and Gravois Townships. This is only true with respect to the Justices of the Peace who were holding office when this annexation was made, and not to their successors.

## II.

In State ex rel. v. Powles, 136 Mo. 376, l. c. 380, 381, it was held that the County Court was authorized to appoint a Justice of the Peace who resided in West Plains for the reason that that city was a city of more than two thousand (2,000) inhabitants, and that he was a Justice of the Peace within and for the township of Howell. That he could not have been appointed a justice

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of the peace for the city of West Plains for no such office is known to the law. (See also *Carpenter v. Roth*, 192 Mo. 658.)

Therefore, in view of the foregoing authorities, it is the opinion of this Department that the Justice of the Peace elected under Section 2136, Article 1, chapter 10, R. S. Missouri, 1929, by reason of the town of Valley Park having over two thousand (2000) inhabitants, said Justice of the Peace retains jurisdiction in the area comprising the old Bonhomme township and defendants in townships that adjoin the old Bonhomme Township before the division was made.

Yours truly,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General

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