

PROSECUTING ATTORNEY: Can be Probation Officer without violation of Section 18, Article 9 of the Missouri Constitution.

March 13, 1939

Honorable C. H. Skinker
Judge 18th Judicial Circuit
Bolivar, Missouri



Dear Judge Skinker:

We wish to acknowledge your recent letter wherein you state as follows:

"I wish to thank you for your letter of February 21st, enclosing your opinion on the subject of the eligibility of a prosecuting attorney to serve as a probation officer in a county of less than fifty thousand inhabitants.

I entirely agree with you that there is no conflict in the duties of the two officers, and I think as a matter of fact in most of the small counties the prosecuting attorneys have been performing the services which probation officers are supposed to perform.

However, your opinion does not go into the question of whether or not a prosecuting attorney can be probation officer without violating the provisions of Section 18 of Article 9 of the Constitution of this State.

This Section provides: 'No person shall, at the same time, fill two municipal offices, either in the same or different municipalities.'

If the word 'county' was substituted for

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the word 'municipal', it would be clear that the prosecuting attorney could not properly be Probation Officer, as in the case of Hastings vs. Jasper County, 314 Mo., 144, the Supreme Court held that a Probation Officer is a County Officer.

I think you will find that Dillon, on municipal corporations, and other authorities, treat counties as well as cities as municipal corporations; or, in other words, that the term 'municipal', as used in the Constitution, includes counties as well as cities.

And I believe the reason for a Constitutional provision of this kind would certainly be as applicable to counties as to cities.

I would like to appoint some of the prosecuting attorneys in this Judicial Circuit Probation Officers, as the pay of the Prosecuting Attorney's office is very small; however, I do not wish to violate this Constitutional provision, and would not want a Prosecuting Attorney to accept another county office if in doing so he would violate the Constitution.

I would be very glad to have your opinion on this question."

Section 2021, Laws of Mo. 1935, page 216, relates to the terms of the court of the 18th Judicial Circuit in which Your Honor presides:

"The circuit courts shall be held in the eighteenth judicial circuit as follows: in the county of Camden, on the fourth Monday in March and the third Monday in October; in the county of Dallas, on the

second Monday in January, the fourth Monday in Spril and the first Monday in September; in the county of Hickory, on the third Monday in April and the third Monday in November; in the county of Polk, on the first Monday in February, the fourth Monday in May and the third Monday in September; in the county of Webster, on the third Monday in January, the second Monday in May and the second Monday in September; in the county of Wright, on the fourth Monday in February, the second Monday in June and the fourth Monday in October."

The counties mentioned in the above section as being in the 18th Judicial Circuit are Camden, Dallas, Hickory, Polk, Webster and Wright, and the 1930 official census gives the population of the above counties to be respectively, as follows: 9,142; 10,541; 6,430; 17,803; 16,148 and 16,741. All of the above counties have a population less than 200,000 inhabitants.

Section 18 of Article IX of the Missouri Constitution provides as follows:

"In cities or counties having more than two hundred thousand inhabitants, no person shall, at the same time, be a state officer and an officer of any county, city or other municipality; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities; but this section shall not apply to notaries public, justices of the peace or officers of the Militia."

In the case of Nickelson vs. City of Hardin 282 Mo. 198, l.c. 203, the contention of the plaintiff was that no part of the above section applied except in cities or counties having in excess of 200,000 inhabitants. De-

pendant's position is that the second clause of the section applied generally without any limitation as to population. The court in holding that the above section applied only in counties and cities having more than 200,000 inhabitants said:

"The question is not free from difficulty, for we are of the opinion that the proper construction of the section is that it applies only in counties and cities having more than 200,000 inhabitants. This disposes of the only question presented by the briefs."

Inasmuch as Article IX, Section 18, of the Missouri Constitution, applies only to counties and cities having more than 200,000 inhabitants and no county or city in your Judicial Circuit has a population that comes within this figure, a determination of the question as to whether the term "municipal" includes county, as used in the said section, becomes unnecessary for determination in this opinion.

We are, therefore, of the opinion that a prosecuting attorney may be appointed probation officer in the 18th Judicial Circuit of the State of Missouri without violating Article IX, Section 18, of the Missouri Constitution.

Respectfully submitted,

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