

JUSTICE OF THE PEACE: When township is divided, justice becomes justice of the peace of the township in which he is thrown. One justice is to be elected in Lemay and Gravois townships in 1940.

May 8, 1940

Mrs. Jessie F. Coleman, Secretary
Democratic County Committee
9211 Pavia
St. Louis County
Clayton, Missouri

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Dear Mrs. Coleman:

This department is in receipt of your request for an official opinion which reads as follows:

"I would appreciate an opinion at your earliest convenience upon the following matter:

"In 1938 there were elected in Carondelet Township in St. Louis County two justices of the peace. In 1939 the county court divided Carondelet Township into Lemay and Gravois Townships and of the two justices of the peace elected for Carondelet Township, one of them fell within the confines of Lemay Township and the other in Gravois Township.

"We would like to know how many justices are to be elected in Lemay and Gravois Townships at the next election."

This department, on October 2, 1939, in an opinion addressed to the Honorable C. W. Detjen, County Counselor of St. Louis County, held that a justice of the peace of a township which was divided, retained jurisdiction over the entire area constituting the original township. This opinion was written when Carondelet Township of St. Louis County was divided into two new townships, Lemay and Gravois, and certain precincts of other townships were added to the two new

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ones. The conclusion was that the justices of the peace of Carondelet Township had jurisdiction over what was formerly Carondelet Township.

In answering your request, this opinion comes up for reconsideration. The whole question revolves around the meaning 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."

We quote from the first opinion which we believe succinctly states the proposition involved:

"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?"

It is well settled in Missouri that a justice of the peace is a municipal township officer. *Carpenter v. Roth*, 91 S. W. 540, 192 Mo. 658; *State ex rel. Walker v. Powles*, 37 S. W. 1124, 136 Mo. 376.

It will be noted that the statute provides that the justice shall continue to discharge his "duties."

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As was said in *Martineau v. Crabbe*, 150 Pac. 301,
46 Utah 327:

"The term 'duties,' as used,
comprehends only judicial acts,
and such ministerial acts as
justices must perform in their
official capacity, * * * "

The duties of a justice of the peace, we believe,
are not the same as his jurisdiction as used in the
sense of territorial extent.

In Krum's *Missouri Justice*, page 1 it is stated:

"Jurisdiction, when used in refer-
ence to judicial proceedings, is
understood to mean, legal authority--
extent of power--or district to which
any authority extends.

"Justices of the Peace derive all
their powers from the statute laws
of the State: they are limited in
legal authority--extent of power--
and to the district or territory
over which their authority extends;
hence, these courts are denominated
Courts of Inferior Jurisdiction.

"It is a general rule, that inferior
jurisdictions, proceeding according
to the course of the common law, are
confined strictly to the authority
given them; and, as a general propo-
sition, it may be said, that such
jurisdictions take nothing by impli-
cation, and whatever powers they
exert must be expressly given in
every instance."

There is no doubt that the statute is ambiguous
and uncertain in its meaning. The phrase "shall fall
into the new township" implies a restriction on the
jurisdiction of the justice of the peace, while the

phrase "as if the township had not been divided" seems to indicate that the jurisdiction shall be the same as he had in the original township.

It is a general rule that, where a statute is uncertain and on its face susceptible of more than one construction, the court may look to prior and contemporaneous statutes to determine its meaning. In 59 Corpus Juris, 1042, it is said:

"Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things, or which have a common purpose; * * * * *
It is a well established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another. The endeavor should be made, by tracing the history of legislation on the subject, to ascertain the uniform and consistent purpose of the legislature, * * * "

This rule of construction is followed in Missouri.

In other words, in determining the meaning of a particular statute resort may be had to the established policy of the legislature as disclosed by a general course of legislation. With this purpose in mind, therefore, it is proper to consider not only the acts passed at the same session of the legislature but also acts passed at prior and subsequent sessions. State v. Davis, 284 S. W. 464, 314 Mo. 373; McAllister v. Terminal Railroad Co., 25 S. W. (2d) 791, 324 Mo. 1005; State ex rel. Shartel v. Westhues, 9 S. W. (2d) 612, 320 Mo. 1093; Hannibal Trust Co. v. Elzea, 286 S. W. 371, 315 Mo. 485.

Section 2150, supra, was first enacted in 1835 (Revised Statutes of Missouri, 1835, page 344). At that same session there was passed an act relating to constables, which provided as follows (Revised Statutes of Missouri, 1835, page 116):

"If any township be divided, the constable in office at the time of the division shall continue to be the constable of the township in which his residence is, and another constable shall be appointed for the other township, as in case of vacancy."

This act is still the law in Missouri and is now Section 11757 of the Revised Statutes of Missouri 1929. In 1873 the General Assembly enacted the law providing for township organization. Included in that law was the following provision (Laws of Missouri 1873, page 99):

"No change or alteration of the boundaries of a township shall vacate the office of any justice of the peace elected and residing therein, but such justice shall be a justice of the township into which he may be thrown by such change or alteration, and shall hold his office for the term for which he was elected. Constables shall also be subject to the provisions of this section."

This provision is now Section 12266 of the Revised Statutes of Missouri, 1929.

Therefore, all statutes that have been enacted relating to the status of justices of the peace and constables after a township has been divided are uniform in holding that the officer retains jurisdiction only over the district in which he resides. Therefore, we can assume that the legislature intended that this rule should apply to justices of the peace

in townships in counties not under township organization. This view is the one accepted by Kelly, in his splendid work on "Justices of the Peace in Missouri" which says (page 3):

"No change or alteration of the boundaries of a township will vacate the office of justice, but the justice will hold his office for the term for which he was elected, in the township in which he is thrown." (citing Section 2150 as authority)

Kelly further says at page 7:

"* * when a township is divided, and any justice in the original township shall fall into the new township, he shall continue in office until his terms expires, as if the township had not been changed. * * * "

Moreover, there are statutes which seem to indicate that a justice must be a resident of the district or township in which he acts.

Section 2141, R. S. Missouri 1929, provides that:

"No person shall be eligible to the office of justice of the peace * * * * who shall not have been an inhabitant * * * of the township for which he is chosen six months next before his election, if such townships shall have been so long established, but if not, then of the township from which the same shall have been taken."

Section 2164, R. S. Missouri 1929, provides:

"Whenever a justice of the peace shall resign, move out of the

township or be otherwise disqualified, he shall immediately thereafter deliver to the clerk of the county court, or, if in the city of St. Louis, the city register, all dockets, records, books, papers and documents appertaining to his office, * * * * *

There is still another reason why we believe that a justice of the peace after a division of township lines becomes a justice of the township in which he resides. As was said above, a justice is a municipal township officer. Furthermore, when a township is divided into new townships, the old township is no longer in existence. State ex rel. Frank v. Tegethoff, 89 S. W. (2d) 666.

To hold that a justice retains his original jurisdiction would make him a justice of the peace of a nonexistent township. How then could a litigant comply with Section 2170, R. S. Missouri 1929, which provides:

"Every action recognizable before a justice of the peace shall be brought before some justice of the township, either: First, wherein the defendants, or one of them, resides, or in any adjoining township; or, second, wherein the plaintiff resides, and the defendants, or one of them, may be found; third, if the defendant is a non-resident of the county in which the plaintiff resides, the action may be brought before some justice of any township in such county where the defendant may be found; fourth, if the defendant is a non-resident of the state, or has absconded from his usual place of abode, the action may be brought before any justice in any county in this state wherein defendant may be found; and, fifth, any action against a railroad company for killing or injuring horses, mules, cat-

tle or other animals, shall be brought before a justice of the peace of the township in which the injury happened, or in any adjoining township."

It is a rule of construction that where the intention of the legislature is so vaguely expressed that the court must resort to construction that it is proper to consider the results and consequences and place upon the statute a construction which will not result in inconvenience, hardship or absurd consequences. State ex rel. St. Louis Public Service Co. v. Public Service Commission, 34 S. W. (2d) 486; Bassen v. Monckton, 274 S. W. 404, 308 Mo. 641.

We believe that in placing a justice in a named existing township will do away with the inconvenience and hardship that would beset a litigant seeking to determine the proper jurisdiction in which to sue.

In view of the above reasons, the opinion of this department of October 2, 1939, addressed to Honorable C. W. Detjen, County Counselor of St. Louis County, is hereby overruled, and it is now the opinion of this department that if any township is divided, the justice of the peace in office at the time of the division, shall continue to be the justice of the peace of the township in which he resides.

We now take up the question presented by your request. Section 2366, Laws of Missouri 1939, p. 340, provides as follows:

"In all counties which now have or may hereafter have a population of not less than two hundred thousand (200,000) nor more than four hundred thousand (400,000) inhabitants according to the last United States decennial census, there shall be elected every four years two justices of the peace for each township therein and each shall receive a salary of

((\$2,000.00) Two Thousand Dollars per annum, payable monthly, out of the treasury of the county in which he is elected. Provided, that the two justices elected at large in each township at the general election of 1938 shall fill the offices herein provided in such counties, subject to the provisions of this Act, until January 1st, 1943 and beginning with the general election of 1942 no justice of the peace shall be elected except as herein provided, and provided further, from and after the effective date of this act and until January 1st, 1943, in any such county, all other duly elected justices of the peace now in office in such county may be paid by the county court such salary, clerk hire, and other expense as the county court may deem necessary and proper but not to exceed One Hundred Dollars (\$100) per month total for each justice; and provided further that nothing herein contained shall be construed to require any election, general or special until said general election of 1942, and in all counties of this state which now contain or may hereafter contain a township now or hereafter containing not less than seventy-five thousand inhabitants and not over one hundred and fifty thousand inhabitants according to the last United States decennial census, there shall be elected in every such township at the general election in the year 1942 and every four years thereafter three Justices of the Peace and each shall receive the salary of two thousand dollars per annum payable monthly out of the treasury of the county in which such Justice is elected."

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Section 2140, R. S. Missouri 1929, provides:

"When a vacancy occurs in the office of justice of the peace, the county court of the county in which such vacancy occurs may supply the same by the appointment of some person competent and qualified who shall hold his office until the next general election of county officers, and until his successor is elected, commissioned and qualified."

Under the above statutes each township is entitled to two justices of the peace, and in case of a vacancy in the office of justice of the peace, the county court may appoint some person who shall hold his office until at the next general election of county officers.

The County Clerk of St. Louis County informs this department that the county court has not appointed any justice of the peace for Lemay or Gravois Townships. Under the ruling that when a township is divided that the justice of the peace becomes a justice of the township in which he may fall, it will be seen that Lemay and Gravois Townships each have one justice of the peace who were the justices of the old Carondelet Township, therefore, there is one vacancy in the office of the justice of the peace in each of the two townships. Therefore, at the 1940 general election of county officers there shall be elected one justice of the peace each in Lemay and Gravois Townships in St. Louis County.

CONCLUSION.

It is, therefore, the opinion of this department that if any township is divided, the justice of the peace in office at the time of the division, shall continue to be the justice of the peace of the township in which he resides.

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It is further the opinion of this department that there shall be elected at the next general election of county officers one justice of the peace for Lemay Township and one for Gravois Township in St. Louis County.

Respectfully submitted

ARTHUR O'KEEFE
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APPROVED:

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