

PROBATE COURTS:
JURISDICTION:

Probate Judge may not hold preliminaries
and try misdemeanor cases.

December 21, 1942

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Honorable Val Perkins
Probate Judge Elect
Milbourn, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an opinion from this Department on the question of whether or not a probate judge may try misdemeanor cases and hold preliminary examinations.

Since the office of Probate Judge is created by statutes, and since such office has no common-law powers, we must look to the statutes only, for the answer to your question. This principle is well stated in Vol. 15 C. J. page 1011, Section 426, which is as follows:

"Probate courts have no common-law jurisdiction, but the nature, extent, and exercise of their jurisdiction depend on the terms of the constitutional or statutory grant. They cannot exercise any powers other than those which have been expressly conferred upon them, or which are necessarily implied from those expressly conferred; and their powers are not to be extended by construction or by unnecessary implication. * * * * *

The jurisdiction of a probate court is provided by Section 2437 R. S. Mo. 1939 which is as follows:

"Said court shall have jurisdiction over all matters pertaining to probate business, to granting letters testamentary and of administration, the appointment of guardians and curators of minors and persons of unsound mind, settling the accounts of executors, administrators, curators and guardians, and

the sale or leasing of lands by administrators, curators and guardians, and over all matters relating to apprentices; and such judges shall have the power to solemnize marriages."

Also, Section 2442 R. S. Mo. 1939, provides as follows:

"The judge of probate shall be a conservator of the peace, and shall have power to issue all writs which may be necessary in the exercise of the jurisdiction of said court, according to the usage and principles of law, and may let to bail any party indicted for bailable offense in the county in which the indictment is pending."

This Section makes the probate judge a conservator of the peace but it makes no provision for such judge to try misdemeanor cases or hold preliminaries. Under the statutory title of Criminal Procedure and especially Article IV of Chapter 30, you will note that provision is made giving to the Justice of the Peace, concurrent original jurisdiction with the circuit court to try misdemeanor cases. Article V of Chapter 30, confers on Justices of the Peace, jurisdiction to hold preliminaries in cases where a person is charged with a felony. Neither Article IV nor Article V of said Chapter confers any jurisdiction on a probate judge to hear and try misdemeanor cases or hold preliminaries.

CONCLUSION.

Following the principles hereinbefore announced, it is the opinion of this Department that a probate judge is without jurisdiction to hear and try misdemeanors or to hold preliminary examinations.

Respectfully submitted

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APPROVED:

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