

COUNTY COURT. Two members are sufficient to transact business.

December 29, 1943

1/11/44  
**FILED**

Honorable George Bales,  
Clerk County Court  
Grant City, Missouri

Dear Mr. Bales:

Under date of December 22, 1943, you wrote this office requesting an opinion as follows:

"I am writing you as clerk of the County Court of this Worth County, Missouri.

"You are already advised that our county court is comprised of Frank Segó, Presiding Judge, H. F. Holland and E. A. Matthews, Associate Judges.

"Frank Segó, the Presiding Judge, on December 15th, 1943, left here for parts unknown, leaving his family, home and business and under circumstances under which most certainly he will not return and could not continue to be presiding judge if he did return.

"As the remaining members of the County Court and myself understand the law, Section 2477, R.S. 1939, when a vacancy occurs, such vacancy shall be certified by myself to the Governor, who will fill the vacancy, but, of course, we have the question of when this vacancy occurs or whether there is a vacancy. This Presiding Judge has simply left here, and as indicated above, certainly will not return or will not in any event continue to be presiding judge. What the remaining members of the County Court and myself want to know is whether or not the two remaining members of the Court can go ahead and transact the County's business under these circumstances and without the Presiding Judge being here. I have taken this matter up with the

Prosecuting Attorney here, Mr. John Ewing, and also he suggests that I write you for an opinion on this question. You will have in mind also that this is nearing the end of the year, and it is necessary to close this year's business of the County.

"We will appreciate hearing from you promptly. We would like for you to include in this opinion as definitely as you can the powers of the remaining members of the County Court, and what we can do, and how to do it, and also when we are, and how we can determine there is a vacancy. Due to the peculiar circumstances here and the pressing need of action by the County Court, we will appreciate your prompt reply."

Your question regarding the transaction of business by the County Court is answered by Section 2493, Article 13, Chapter 10, which section is as follows:

"A majority of the judges of the county court shall constitute a quorum to do business; a single member may adjourn from day to day, and require the attendance of those absent, and when but two judges are sitting and they shall disagree in any matter submitted to them, the decision of the presiding judge at the time being, to be designated by the clerk of such court, shall stand as the judgment of the court."

Quorum is defined in Webster's New International Dictionary, Second Edition, as:

"Such a number of the officers or members of any body as is, when duly assembled, legally competent to transact business. The quorum of the body is an absolute majority of it, unless the authority by which the body was created fixes it at a different number."

And the following definition of the word quorum is taken from the Georgia case of Morton vs. Tallmage 144 S.E. Reporter 111:

"Quorum is such a number of the members of a body as is competent to transact business in the absence of the other members."

In regard to when a vacancy will exist, the law is well settled that the power to fill a vacancy does not ordinarily carry with it the power to determine that a vacancy exists. When an officer is once elected and qualified he continues to hold the office for the term to which he was elected unless he dies, resigns or is ousted by a judgment of ouster rendered by a court of competent jurisdiction. Under the exceedingly brief statement of facts in your letter the present presiding judge will continue to hold his office for the term unless he dies, resigns or is ousted.

Conclusion

The two members of the county court have authority to transact business in the absence of the presiding judge and the county clerk should designate one of the associate judges, such designation being entered in the records of the Court.

Respectfully submitted,

W. O. JACKSON,  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

WOJ:JK