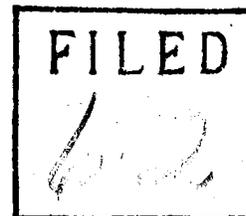


CONSTITUTIONAL LAW: Under new Constitution magistrate may not draw compensation for performing other public duties.

Magistrates

April 10, 1945.



7/19

Honorable Edwin W. Mills
Prosecuting Attorney
St. Clair County
Osceola, Missouri

Dear Mr. Mills:

Under date of April 5, 1945, you wrote this office requesting an opinion as follows:

"Is an elected justice of the peace whose term expires in 1948 (permissible under Section 4 of the Schedule of the new Constitution of Missouri) prohibited by Section 24 of Article V (Judicial Department) from being appointed and serving, with compensation, as Police Judge in the City of the Fourth Class where he resides?"

Section 4 of the Schedule of the new Constitution, referred to in your letter, is as follows:

"All courts of common pleas now existing, the St. Louis courts of criminal correction, and all circuit court circuits as now established, shall continue until changed or abolished by law. The justices of the peace shall continue to hold their offices and receive the emoluments thereof until their terms of office expire, upon which their records shall be transferred to the magistrate courts."

And Section 24 of Article V of the Constitution of 1945, also mentioned in your letter, is as follows:

"All judges shall receive as salary the total amount of their present compensation

until otherwise provided by law, but no judge's salary shall be diminished during his term of office. Until the end of their present terms probate judges shall continue to receive compensation and clerk hire as now provided by law. The salaries of magistrates shall be fixed by law. No judge or magistrate shall receive any other additional compensation for any public service, or practice law or do law business, except probate judges during their present terms. Judges may receive reasonable traveling and other expenses allowed by law. The fees of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

A few of the elementary rules pertaining to construction of constitutional provisions are called to your attention. These are taken from Corpus Juris Secundum as follows (Vol. 16):

(Section 15, page 51)

"Generally speaking, principles of construction applicable to statutes are also applicable to constitutions, but not to the extent of defeating the purposes for which a constitution is drawn."

(Section 18, page 55)

"A clear and unambiguous constitutional provision cannot be evaded by construction because it works a hardship or absurdity, but a construction which will have such effect will be avoided if possible."

(Section 19, page 56)

"The language of a constitutional provision should be construed as it is written, unless to do so would contravene the manifest intention of its framers, and the words employed should be given their natural and obvious significance, having due regard for the rules of grammar and punctuation."

Neither of these provisions of the new Constitution contains any technical words and in construing these provisions it is necessary to give to the words their usual meaning and to give

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effect to all of the words. Going back to Section 4 of the Schedule, it unquestionably authorizes a justice of the peace, who held office at the time of the taking of effect of the new Constitution, to finish out his term of office and to receive the compensation incident to the office. Section 24 of Article V prohibits a magistrate from receiving any other compensation for any public service. A justice of the peace is a magistrate.

"In an insurance policy providing that the company shall not be liable for damage by fire which shall happen or arise by any person or persons engaged or concerned in notorious resistance to the authority of magistrates, the word 'magistrates' means public civil officers."

---Straus v. Imperial Fire Ins.
Co., 6 S. W. 698, 700, 94 Mo.
182, 4 Am. St. Rep. 368.

"In a narrower sense, the term 'magistrate' includes inferior judicial officers, such as justices of the peace, etc."

---Childers v. State, 16 S. W.
903, 905, 30 Tex App. 160, 28
Am. St. Rep. 899; Martin v.
State, 32 Ark. 124, 127.

Conclusion

Inasmuch as Section 24 of Article V of the Constitution of 1945 prohibits a magistrate from receiving any other compensation for any public service, and as a justice of the peace is a magistrate, the conclusion necessarily follows that if the justice of the peace should be appointed to serve as police judge of a city or village that under this provision of the Constitution the justice of the peace would be precluded from drawing the compensation attached to the office of police judge.

Respectfully submitted,

APPROVED:

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