

CONSTABLES: The office of constable will be abolished as of January 1, 1947, or at the expiration of the term of the present constable if after January 1, 1947.

9/24/46



9/27

Mr. O. A. Kamp
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, based upon the following facts:

"There seems to be some uncertainty regarding the Office of Township Constables, under the new Constitution.

"The County Clerk asked me to write your office for an opinion on this matter, so he will know whether there should be any provisions for election of constables on the ballots in the coming election. He informs me that there were some names written in for nomination at the Primary Election, and he is not certain about the matter.

"It is plain that the office of Justice of Peace is eliminated, but I have failed to find where the office of Constable is done away with.

"Please write me your opinion at your very earliest opportunity, as to the office of constable.

"I assume that since all duties are taken away from the Constable that they are eliminated, however I do not have the law on this matter to make same clear."

Without quoting, Sections 13370 to 13381, inclusive, R.S. Mo. 1939, as amended, establish and define the office of

constable. These sections contain the provisions under which the office of constable has heretofore operated.

Section 1 of Senate Bill No. 361 repeals all of the above sections of the statutes, and is as follows:

"That Sections 13370 as amended by an act of the 61st General Assembly, approved August 2, 1941, appearing in Laws of Missouri, 1941, at page 325, and as further amended by an act of the 61st General Assembly, approved August 2, 1941, appearing in Laws of Missouri, 1941, at page 326, and Sections 13371 to 13381, both inclusive, the same being all of Chapter 97 of the Revised Statutes of Missouri, 1939, entitled 'Constables', be and the same are hereby repealed."

Section 2 of Senate Bill No. 361 provides the effective date, and is as follows:

"This act shall become effective on January 1, 1947 except that in counties in which the present terms of constables end after January 1, 1947, this act shall take effect at the expiration of the present terms of constables in said counties."

As can be readily seen, the present constables will hold their office until January 1, 1947, or until the expiration of their term if the same is after January 1, 1947.

The powers and duties exercised by the constables before the sections establishing that office were repealed will be exercised by the sheriff after the expiration of the term of office of the present constable, as provided for in Section 1 of Senate Bill No. 362, which is as follows:

"Whenever the word 'constable' appears in any statute, except insofar as any such statute applies to the City of St. Louis and to counties of the first class, the same shall hereafter be deemed to refer exclusively to and to mean 'sheriff' unless such construction is plainly repugnant to the context of any such statute."

Section 2 of Senate Bill No. 362 establishes the effective date of the act, which date is the same as that provided for in Senate Bill No. 361.

Conclusion.

It is the opinion of this department that the office of constable will be abolished in counties of the second, third and fourth class as of January 1, 1947, or at the expiration of the present term of the constable if same is after January 1, 1947, and therefore it will not be necessary to include the office of constable upon the ballot in the coming election.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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