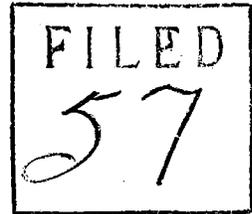


PROBATE JUDGE: [REDACTED] to practice law after present

March 28, 1946



H-4  
Honorable W. V. Mayse  
Prosecuting Attorney  
Harrison County  
Bethany, Missouri

Dear Mr. Mayse:

This will acknowledge your letter requesting an opinion from this Department, whether a lawyer in a county of less than 30,000 population may hold the office of Probate Judge, and continue to practice law if he is not the present office holder of the Probate office.

Your letter states:

"I would appreciate very much getting an opinion from your office on the construction of Section 24, Article 5 of the New Constitution of Missouri with regard to the specific question of whether or not a lawyer in a county of less than 30,000 population can hold the office of Probate Judge and continue to practice law if he is not the present office holder of the Probate office.

"I would appreciate your opinion at your very earliest convenience due to the fact that it may influence the decision of an attorney of our county as to whether or not he will file for the office of Probate Judge."

It would seem that an answer to the question you submit would not be difficult.

Section 24 of Article V of the new Constitution of this State, under the subject of "Judicial Department"

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is so plain and unambiguous that there should be no debate or controversy respecting the right of a Judge of the Probate Court to practice law.

The question of population mentioned in your letter has nothing to do with the question propounded.

Section 18, Article V of the present Constitution of this State does designate that in counties of the State of Missouri, having 30,000 inhabitants or less, the Probate Judge shall be Judge of the Magistrate Court. But said Section 18 does not undertake to prescribe the right of an occupant of the Probate Judge's office to practice law. That question, we believe, is entirely settled by the terms of Section 24, Article V of the present Constitution of this State, which 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 or 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 fee of all courts, judges and magistrates shall be paid monthly into the state treasury or to the county paying their salaries."

That part of said Section 24, Article V of the present Constitution which states:

"\* \* \* No judge or magistrate shall receive any other or additional compensation for any public service, or practice law or do law business, except probate judges during their present terms. \* \* \*".

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is quite plain, we believe, in effect, that no judge, either of a Probate Court, or any other Court, may practice law, except that it does provide Probate Judges during their present terms of office may practice law. We believe the meaning and the only reasonable construction and interpretation to be placed upon that clause of said Section 24, of Article V of the New Constitution is that after the present term of office of any Probate Judge in this State has expired he, if re-elected, or if perchance, the occupant of the Probate office be a newly elected official, neither one or the other may practice law.

## CONCLUSION.

It is, therefore, the opinion of this Department that "a lawyer in a county of less than 30,000 population" may not, under the terms of Section 24, Article V of the present Constitution of this State, hold the office of Probate Judge and continue to practice law if he is not the present office holder of the Probate office.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

GWC:ir