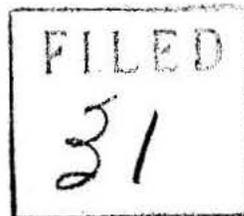


MAGISTRATES: )  
JUSTICES OF THE PEACE: ) Magistrates and justices of the peace in counties with township organization have concurrent jurisdiction in preliminary examinations for felony cases and in misdemeanor cases.

January 20, 1947



1/23

Honorable Robert C. Frith  
Prosecuting Attorney  
Livingston County  
Chillicothe, Missouri

Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion from this department, reading as follows:

"As you know this county is under Township Organization and the terms of our Justices of the Peace expire April 1st. The question has been raised whether preliminary and felony cases and misdemeanors can be filed in their court, or whether the Magistrate has exclusive jurisdiction after January 1st; also whether if the preliminary was held before the Justice of the Peace after January 1, whether the defendant could raise the issue that he had not been granted a preliminary.

"I would appreciate it very much receiving an opinion on this point."

The judicial power of the state has been vested in certain specified courts by Section 1 of Article V of the Constitution of 1945, which provides:

"The judicial power of the state shall be vested in a supreme court, courts of appeals, circuit courts, probate courts, the St. Louis courts of criminal correction, the existing courts of common pleas, magistrates courts, and municipal corporation courts."

Although the justice courts are not included in the above section, the effective date of said section is limited by Section 3 of the Schedule of the Constitution of 1945, which provides:

"The terms of all persons holding public office to which they have been elected or appointed at the time this Constitution shall take effect shall not be vacated or otherwise affected thereby."

And by Section 4 of the Schedule, which provides:

"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."

Following the mandate of the above two sections, the 63rd General Assembly passed Senate Bill 350 which repealed Section 3804, R. S. Mo. 1939, providing for the jurisdiction of justices of the peace in misdemeanor cases, but further provided that said bill would not become effective in counties operating under township organization until the expiration of the terms of the justices of the peace. Therefore, since Senate Bill 193 of the 63rd General Assembly provides that magistrates shall have jurisdiction in misdemeanor cases, and since Section 3804, R. S. Mo. 1939, is still in effect in counties with township organization, justices of the peace and magistrates will have concurrent jurisdiction in misdemeanor cases in said counties.

Section 3893, R. S. Mo. 1939, provides that a person shall be accorded the right of a preliminary examination before some justice of the peace in the county where the offense is alleged to have been committed. Senate Bill 281 of the 63rd General Assembly provides as follows:

"Whenever, in any statute, the word 'justice' (referring to justice of the peace) or the words 'justice of the peace' appear, said word or words shall hereafter be deemed to include and refer to 'magistrate,' unless there be something in the subject or context repugnant to such construction." (Underscoring ours.)

Reading the two above sections together it is clear that the magistrates would also have concurrent jurisdiction to hold preliminary examinations in felony cases.

#### Conclusion

Therefore, it is the opinion of this department that justices of the peace and magistrates have concurrent jurisdiction in misdemeanor cases and in preliminary examinations for felony cases in counties that operate under township organization, until the terms of the present justices of the peace expire.

Respectfully submitted,

PERSHING WILSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

PW:EG