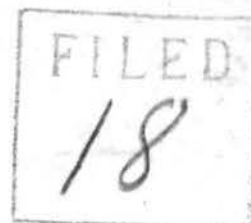


MAGISTRATE COURTS: Magistrate can solemnize marriages in
MARRIAGE: his county alone except under certain
conditions.



Honorable Joseph P. Collins
Associate Chief Magistrate
Civil Courts Building
St. Louis, Missouri

Dear Judge Collins:

This is in reply to your letter of recent date, requesting the opinion of this department regarding the question of whether or not a magistrate has the authority to solemnize marriages in counties other than the one in which he is elected or appointed.

Section 3363, Laws of Missouri, 1945, page 1145, authorizing certain officials to solemnize marriages, provides:

"Marriages may be solemnized by any licensed or ordained preacher of the gospel, who is a citizen of the United States, or who is a resident of this state and a pastor of any church in this state, or by any judge of a court of record, except judges of the probate court."

Of course, magistrate courts being courts of record (Laws of Missouri, 1947, Volume I, page 240, Section 19), it necessarily follows that a magistrate is included in the application of Section 3363 as a judge of a court of record and as such is authorized to solemnize marriages. It has been so held by this department. However, Section 3363 makes no provision concerning the territorial jurisdiction of said judges in performing such services. Further, no such provision is found in the general laws relating to magistrate courts.

Magistrates are elected or appointed within and for a particular county. The official acts of a magistrate, in order to be valid, must be performed within the territorial boundaries of that county. He is not a magistrate in any other county.

In the case of State ex rel. Gardner v. Hall, 221 S.W. 708, 282 Mo. 425, the court held, at page 435:

"It is elementary that a court's power to hear and determine is limited to its territorial jurisdiction as defined by law. Beyond this its orders are nullities and its process is futile. (Works on Jurisprudence, p. 22.)"

See also Wagoner v. Wagoner, 229 S.W. 1064, 287 Mo. 567, l.c. 594, and State v. Aronson, 350 Mo. 309, 165 S.W. 404, l.c. 407.

It was held in the case of City of St. Louis v. Sommers, 148 Mo. 398, at page 401, as follows:

"The solemnization of a marriage is in no sense a judicial act. Were a justice to perform it in his court, no record or note could be made of it. It may be performed anywhere within his jurisdiction, at any and all hours of the night or on Sunday * * *" (Underscoring ours.)

Only in certain instances is a magistrate empowered to act in a county other than the one in which he was elected or appointed. If the magistrate in any county which has only one magistrate court is incapacitated and unable to act, or is absent from the county for a period of five days or more, the judge of the circuit court of such county may make an order appointing and designating some magistrate of another county within the circuit to act as judge of the magistrate court of such county until the regular magistrate resumes his duties (Laws of Missouri, 1945, page 765, Section 10a). This provision applies only when a temporary vacancy in the office of magistrate is created. When a permanent vacancy is created in such office, the Supreme Court of Missouri, in accordance with Article V, Section 6 of the Constitution of Missouri, is authorized to impose additional duties upon a magistrate and transfer such magistrate from one county to another until a regular magistrate is elected or appointed for that county.

Conclusion.

In view of the foregoing, it is the opinion of this department that a magistrate is authorized to solemnize marriages only within


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the county in which he was elected or appointed unless assigned to another county by the judge of the circuit court of such county or the Supreme Court of Missouri, as provided by law.

Respectfully submitted,

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APPROVED:



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