

MAGISTRATE COURTS: Magistrates cannot give instructions
in civil cases.

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Honorable A. B. Hoy
Judge of the Probate Court
Saline County
Marshall, Missouri

Dear Judge Hoy:

This is in reply to your letter of recent date requesting
the opinion of this department on the following question:

"May a magistrate give instructions or
declarations of law in the trial of civil
cases?"

Instructions of the court on points of law involved in a
case are statutory in nature, and therefore authorization must
be found in the statutes before a court can give such instruc-
tions. The law relating to magistrate courts, found in Laws
of Missouri, 1945, page 765, as amended, does not contain such
authorization. Section 101 of said act, found in the Laws of
Missouri, 1945, page 795, provides that in some cases the trial
of suits before magistrates shall be governed by the usage and
practice in the circuit court. Said section is as follows:

"The proceedings upon the trial of suits
before magistrates with respect to the
examination of witnesses, the submission
of evidence and argument, and the order
and conduct of the trial, shall, when
no other provision is made by law, be
governed by the usage and practice in
the circuit court, so far as the same
may be applicable." (Underscoring ours.)

Section 1118, R. S. Mo. 1939, provides that the court may
give instructions on any point of law arising in a cause. How-
ever, it will be noted that said Section 101, supra, expressly
authorizes the proceedings upon the trial of suits before

magistrates, when no other provision is made, to be governed by the usage and practice in the circuit court with respect only to the examination of witnesses, the submission of evidence and argument, and the order and conduct of the trial. There is no provision authorizing the circuit court procedure and practice with respect to giving instructions or declarations of law to be followed in the magistrate court. By the express words of the statute the magistrate court is told what circuit court procedure and practice may be followed in the magistrate court. Therefore, no other circuit court procedure and practice can be employed in the magistrate court. When special powers are conferred, it is well settled that such authority operates to the exclusion of any other power. The expression of one thing implies the exclusion of another thing. *Kroger Grocery & Baking Co. v. City of St. Louis*, 106 S. W. (2d) 435, l.c. 439; *Lancaster v. Atchison County*, 180 S. W. (2d) 706, l.c. 709; *Kansas City Mo. v. J. I. Case Threshing Machine Co.*, 87 S. W. (2d) 195, l.c. 205; *State v. Smith*, 111 S. W. (2d) 513, l.c. 514.

This interpretation is in harmony with the obvious intent of the Legislature as an analogous situation is found in Laws of Missouri, 1945, page 750, Section 29, relating to the jurisdiction and procedure of magistrate courts in cases of misdemeanors. There it is provided that no instructions or declarations of law shall be given by the magistrates in proceedings upon the trial of misdemeanors.

Conclusion.

It is therefore the opinion of this department that magistrates are not authorized to give instructions or declarations of law in the trial of civil cases.

Respectfully submitted,

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APPROVED:

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