

CONSTITUTIONAL LAW: Proviso in change of venue section
COUNTIES: applicable to counties of less than 75,000
CIRCUIT COURTS: is constitutional.
CHANGE OF VENUE:

June 12, 1951

6-14-51



Honorable Charles V. Barker
Prosecuting Attorney
Polk County
Bolivar, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"I would like to have your opinion concerning the validity of the following quoted part of Section 545.490 of the revised statute of 1949 concerning the change of venue in criminal cases.

" * * * provided, in all cases in counties in this state which now have or may hereafter have a population of less than seventy-five thousand inhabitants if such petition for change of venue is supported by the affidavits of five or more credible disinterested citizens residing in different neighborhoods of the county where said cause is pending, then the court or judge in vacation, shall grant such change of venue, as of course, without additional proof; * * * "

"In particular I am interested in whether or not the above quoted provision violates Article 6 Section 8 of the Missouri Constitution."

Section 545.490, RSMo 1949, a portion of which you

June 12, 1951

quoted in your opinion request, provides for changes of venue in circuit courts.

Section 8, Article VI of the Constitution of Missouri, provides as follows:

"Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

The general rule to be followed in construing constitutional provisions is found in the case of *State ex rel. v. Koeln*, 61 S.W.2d 750, where the Supreme Court said l.c. 755:

"But under established rules of construction the courts should resolve seemingly conflicting or overlapping provisions of the Constitution by harmonizing them and rendering every word operative, if possible, so as to give effect to the whole."

We believe that the last sentence of Section 8 of Article VI of the Constitution, when construed with the rest of such section, must be held to refer only to laws providing for the organization and powers of counties. It is clear that the purpose of such section is to provide that the administration of county affairs be uniform in each class of counties.

In the case of *State ex inf. v. Kiburz*, 208 S.W.2d 285, the Supreme Court held with regard to Section 8, Article VI of the Constitution, as follows l.c. 287:

"Sec. 8, Art. VI of the 1945 Constitution introduced into the organic law a new requirement with respect to

Honorable Charles V. Barker

June 12, 1951

legislation governing the structure of county government, and so necessitated a general overhauling of the whole body of statute law concerning that subject, for absent classification of counties (and none existed theretofore within the meaning of this constitutional provision), there could be no valid legislation governing their organization and powers, subsequent to July 1, 1946."
(Emphasis ours.)

It is obvious that a law relating to changes of venue in circuit courts is not a law relating to the organization or power of a county. Therefore, it is our view that the proviso quoted in your opinion request, found in Section 545.490, RSMo 1949, does not violate the provisions of Section 8, Article VI of the Constitution of Missouri.

CONCLUSION

It is the opinion of this department that Section 545.490, RSMo 1949, is a valid and constitutional law.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:lrt