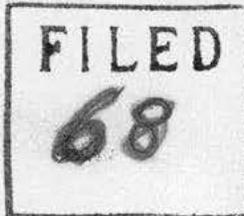


OFFICERS:  
ASSISTANT PROSECUTING  
ATTORNEY:

Assistant prosecuting attorneys in  
counties of the second class may  
sign informations either for felonies  
or misdemeanors.



April 3, 1952

4-3-52 ✓

Honorable A. M. Olmsted  
Judge of the Magistrate Court  
Second District  
St. Joseph, Missouri

Dear Sir:

Reference is made to your recent request for an official  
opinion of this department which reads as follows:

"In counties the size of Buchanan do  
the Assistant Prosecuting Attorneys  
have the legal right to sign informations  
(when the Prosecuting Attorney is present  
at his office and in good health) either  
misdemeanor or felonies. If the Prosecuting  
Attorney is absent from the State does he  
have to designate one Prosecutor to act  
in his behalf by signing informations?"

You first inquire as to whether or not an assistant prosecuting  
attorney in counties of the second class can sign informations.  
Section 56.200, RSMo 1949, provides for the appointment of assist-  
ants to the prosecuting attorney in counties of the second class.  
Said section reads as follows:

"The prosecuting attorney, in counties  
of the second class, shall be entitled  
to not more than three assistants. Such  
assistants shall be appointed by the  
prosecuting attorney, but no appointment  
shall be effective until approved by the  
judges of the circuit court of the county.

They shall possess the same qualifications and be subject to the same fines and penalties for neglect of duty or misdemeanor in office as the prosecuting attorney. They shall be paid a salary, in such an amount, as shall be fixed by the prosecuting attorney and approved by the judges of the circuit court. The appointment, approval, and agreement as to salary of each assistant shall be in writing, signed by the judges of the circuit court and the prosecuting attorney, and filed by the prosecuting attorney with the county court."

Section 56.210, RSMo 1949, provides that when said assistants are appointed by the prosecuting attorney with the approval of the circuit judges of the county of the appointment and said appointment is filed with the county court, it is the duty of the county court to commission such assistant(s) "as other officers are commissioned by such court." Section 56.220, RSMo 1949, provides that said assistants "shall be commissioned for and hold their offices for the remainder of the term of the prosecuting attorney by whom they have been appointed." Although the terms assistant and deputy are not synonymous in their ordinary usage, since an assistant is not usually a sworn officer, while the term deputy connotes such meaning, we believe that the term assistant as here used in reference to the prosecuting attorney is synonymous with the term deputy.

The appellate courts of Missouri have repeatedly held that an assistant prosecuting attorney is a public official and not merely an assistant in the true sense of the term. *State v. Hynes*, 39 Mo. 569, *Brown's Appeal*, 69 Mo. App. 159, *State v. Carey*, 318 Mo. 813.

We have been unable to find any provision relating to the duties of an assistant prosecuting attorney in counties of the second class and therefore believe that the general rule that where the law authorizing the appointment of a deputy without any limitation on his power, such deputy may exercise any of the duties pertaining to the office for which he is appointed deputy. This rule is stated in 67 C. J. S., *Officers*, Section 15, page 451, as follows:

"When the law authorizes an officer to appoint a deputy without any express limitation on his power, the duties of the office may be performed by either,

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and a deputy may exercise any of the duties pertaining to the office, as the necessity of convenience of the public may demand for their use, and this power may not be curtailed by the principal, unless the law expressly authorizes him to do so."

This rule was cited with approval in the case of Brown's Appeal, 69 Mo. App. 159, wherein the Kansas City Court of Appeals in considering the authority of an assistant prosecuting attorney to sign an information said:

"\* \* \*As said in Mechem's Offices and Officers (sec. 570): 'Where a public officer is authorized to appoint a deputy, the authority of that deputy, unless otherwise limited, is commensurate with that of the officer himself, and, in the absence of any showing to the contrary, it will be so presumed. Such a deputy is himself a public officer, known and recognized as such by law. Any act, therefore, which the officer himself might do, his general deputy may do also.'"

More specifically in regard to assistant prosecuting attorneys, the rule is again stated in 27 C. J. S., Section 30, District and Prosecuting Attorneys, page 448, as follows:

"An assistant or deputy prosecuting attorney pro tempore, is generally clothed with all the powers and privileges of the prosecuting attorney, and all acts done by him in that capacity must be regarded as done by the prosecuting attorney himself."

In the case of Knuckles v. Board of Education of Bell County, 114 S. W. (2d) 511, the Court of Appeals of Kentucky was confronted with a somewhat similar question in determining the duties of an assistant superintendent of schools. In its opinion the court said:

"The only place in our entire statutes wherein any reference is made to the position of assistant superintendents of public schools, is in section 4399-34 of the statutes, supra, saying: 'The board

of education may, on the nomination of the superintendent of schools, appoint as many assistant superintendents as it deems necessary, whose compensation shall be fixed by the board and who may be removed for cause by the superintendent, with the approval of three members of the board of education.' That sentence is the only one in our statutory law that we have been able to find, or to which we have been cited, wherein any sort of reference is made to the position of 'assistant county superintendent.' Hence, there exists no statute expressly defining his duties. In such cases it is the undoubted duty of courts to conclude that he was to perform the duties of a 'deputy' superintendent, and to treat the words 'assistant' and 'deputy' as being synonymous in meaning when applied to the position under consideration. Mr. Bouvier in his law dictionary in defining the word 'deputy' says: 'In general, a deputy has power to do every act which his principal might do; but a deputy can not appoint a deputy. See *Abrams v. Ervin*, 9 Iowa 87; *Lewis v. Lewis*, 9 Mo. 183, 43 Am. Dec., 540; *Confiscation Cases*, 20 Wall. 92, 111, 22 L. Ed., 320.' Mr. Black in his law dictionary, in stating the meaning and scope of the word, says: 'A deputy has, in law, the whole power of his principal. Wharton.' We approved such definitions as applied to deputy clerks in the case of *Ellison v. Stevenson*, 6 T. B. Mon. 271. In that opinion, prepared for the court by Judge Bibb, it is said: 'It cannot be maintained as a legal principle, that the deputy, lawfully constituted as such, has less power than the principal.'\* \* \*

#### CONCLUSION

It is therefore the opinion of this department that an assistant prosecuting attorney in counties of the second class may legally sign informations for either felonies or misdemeanors since

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their office is created by the laws of this state without any express limitation on their powers.

Since your first question has been answered in the affirmative, it is not necessary to answer your second question.

Respectfully submitted,

D. D. GUFFEY  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

DDG:hr