

COUNTY COURTS: Two judges constituting a quorum for doing
ADJOURNED TERMS: business under Section 49.070 RSMo 1949, may
legally call an adjourned term of county court
on Saturday following adjournment of regular
term the previous day, under authority of Section
49.200 RSMo 1949.

May 23, 1952



5/28/52

Honorable Thomas G. Woolsey
Prosecuting Attorney of Morgan County
Versailles, Missouri

Dear Sir:

Your recent request for a legal opinion of this department
has been received, and reads in part as follows:

"I would appreciate your office furnish-
ing me an opinion in response to the
following question:

"Can two judges of the County Court call
and hold a legal session of the County
Court, on a Saturday, when they have ad-
journed from a Friday to the following
Monday?"

Section 49.010, RSMo 1949, provides the number of judges
that shall compose the county court, and reads as follows:

"The county court shall be composed of three
members, to be styled judges of the county
court, and each county shall be districted
by the county court thereof into two districts,
of contiguous territory, as near equal in
population as practicable, without dividing
municipal townships."

Section 49.070, RSMo 1949, provides that a majority of the
members of the county court shall constitute a quorum to do
business, and reads as follows:

"A majority of the judges of the county
court shall constitute a quorum to do
business; a single member may adjourn from

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day to day, and require the attendance of those absent, and when but two judges are sitting and they shall disagree in any matter submitted to them, the decision of the presiding judge at the time being, to be designated by the clerk of such court, shall stand as the judgment of the court."

Section 49.170, RSMo 1949, states the number of terms and when they shall be held, and reads as follows:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient; provided, that in counties now containing or that may hereafter contain seventy-five thousand or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat, the terms of said court shall be held monthly and alternately at the county seat and such other place as may be provided for the holding of such court, and each monthly term shall commence on the first Monday in each month."

From the last federal census it appears that your county of Morgan had a population of 10,108, and that the latter portion of Section 49.170, providing for the holding of county court in counties of seventy-five thousand or more inhabitants, where court is held at more than one place in the county has no application to the inquiry in the opinion request. You have not stated that your county court has changed the time for holding regular terms from those provided by the statute, and it is assumed that such regular terms are held four times annually, each commencing on the first Mondays in February, May, August and November.

It is further assumed that a quorum of the members of your county court were present at some regular term of court when court was adjourned from one Friday until the following Monday, and that on Saturday, following the Friday of adjournment two judges called an adjourned session, and your inquiry is whether these two judges might legally call the adjourned session.

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Section 49.200, RSMo 1949, authorizes the county court to hold adjourned terms, and reads as follows:

"Each county court may hold adjourned terms whenever it may become necessary for the transaction of its business."

In commenting upon the power of the county court to call special and adjourned terms of court under the provisions of the statutes of 1899, (and which are substantially the same as those of 1949, quoted above) in the case of State ex rel. v. Mitchell, 127 Mo. App. 455, the St. Louis Court of Appeals said at l.c. 459:

"* * *Section 1783, Revised Statutes 1899, so far as pertinent here, provides that four terms of the county court shall be held in each county annually, commencing on the first Monday of February, May, August and November. Section 1787 provides for adjourned terms whenever it may become necessary for the transaction of the county business, and these adjourned terms are of course continuations and parcel of the regular term. (Trammel v. Railway, 101 Mo. 136, 13 S.W. 505.) Section 1785 provides: 'The president or any two judges of the county court may order a special term whenever the business and interest of the county may require it.' Section 1786 provides for notice of such term. It clearly appears from these several statutory provisions, the Legislature intended to authorize a term of the county court of some character, either regular, adjourned or special, as expressed in the statutes, 'whenever' the business or interests of the county seem to require it. Now it is and has long been the custom of usage of these courts in many of the counties of the state at least, to meet the first Monday in every month of the year; that is to say, to adjourn the May term to the first Monday in June, and in June to adjourn to the first Monday in July; and so with each succeeding term, preparatory to disposing of such matters as may properly come before the court. The Legislature certainly manifested its concern in this connection by specially providing the adjourned terms when in truth and in fact, the power to adjourn from time to time and to hold adjourned terms was inherent in the court

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without the aid and wholly irrespective of the statute. (Higgins v. Ransdall, 13 Mo. 205-208.) However, that may be, the section manifests the concern of the Legislature in providing for frequent and convenient terms of court, to the end that the business in which the county is interested, be not neglected. * * *

Also in the case of State ex rel. v. Nash, 83 Mo. App. 509, a county court adjourned on the sixth to the twelfth day of March, 1900, and on the seventh day of the same month it met and considered certain matters, the Kansas City Court of Appeals held that such county court was lawfully in session on the seventh day of March and that the order made by the court on that day was a valid order. The court said at l.c. 512 of said opinion:

"It is stated in the return of the respondent that the said county court adjourned on the sixth day of March, 1900, to the twelfth day of said month, and that on the seventh day of said month it met and made said order.

"The only question raised by the pleadings is whether or not the action of the county court when it met in session on the seventh day of March 1900, and made the order in question was valid. That the said court was lawfully in session when it made said order seems well established in this and other states. Cole Co. v. Dallmeyer, 101 Mo. 66; State ex rel. v. Railway, 101 Mo. 136; Green v. Morse, 77 N.W. Rep. 925; Bowen v. Stewart, 26 N.E. Rep. 168; Wharton v. Sims, 88 Ga. 617; The Canary, 22 Fed. Rep. 536; Eastman v. Concord, 64 N.H. 263."

From the statutes, and court opinions quoted above, it appears that the Legislature has granted each county court of the various counties of the state the power to hold adjourned terms of court whenever necessary for the transaction of its business. It further appears, that under such authorities, each county court has been granted the power to determine when it shall be necessary for it to hold an adjourned term or terms for the transaction of its business.

Since Section 49070, provides that a majority of the members of the court shall constitute a quorum to do business; the calling of an adjourned term of your county court by two of the judges on a Saturday, following the Friday on which the regular

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term of said court was adjourned to the following Monday was legally and properly called.

CONCLUSION

It is therefore the opinion of this department that two judges, constituting a quorum of the members of a county court for the purpose of doing business, under the provisions of Section 49.070, RSMo 1949, may legally call an adjourned term of court under the provisions of Section 49.200, RSMo 1949, whenever, in the opinion of said judges, the adjourned term is necessary for the transaction of the court's business, and that the calling of an adjourned term by two judges on the Saturday following the adjournment of the regular term the previous day was legally and properly called.

Respectfully submitted,

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APPROVED:



J. E. TAYLOR
Attorney General

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