

QUO WARRANTO:
PROSECUTING ATTORNEYS:

Prosecuting Attorney should not
represent respondents in Quo
Warranto.



March 24, 1953

Honorable W. H. Pinnell
Prosecuting Attorney
Barry County
Cassville, Missouri

Dear Sir:

We have received your request for an opinion of this
department, which request is as follows:

"Some two years ago I was employed by the
City Officials of Exeter, Missouri to
represent them in an action in which they
were Defendants. This prior suit was an
Injunction Suit brought by certain citizens
of the community to enjoin the issuance of
bonds for a water works system. This suit
was subsequently carried all the way to the
Supreme Court where an appeal by the Plain-
tiffs was dismissed. Some two months after
the Appeal was dismissed a similar suit was
filed by the same plaintiff alleging the
same facts with the only difference being
the action was brought in the form of Quo
Warranto, through the Attorney General of
this State. My question is this 'May I
represent the Defendants who have again
consulted me in this second action of
Quo Warranto brought in the name of the
Attorney General.'"

Section 56.060, RSMo 1949, provides, in part, as follows:

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"The prosecuting attorneys shall commence and prosecute all civil and criminal actions in their respective counties in which the county or state may be concerned, defend all suits against the state or county, and prosecute forfeited recognizances and actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or county; and in all cases, civil and criminal, in which changes of venue may be granted, it shall be his duty to follow and prosecute or defend, as the case may be, all said causes, for which, in addition to the fees now allowed by law, he shall receive his actual expenses.
* * *"

Although you do not so state in your request, the proceeding about which you inquire is an action in the nature of quo warranto filed in the name of the Attorney General at the relation of a private individual. It is not an action filed by the Attorney General, ex officio.

Section 531.010, RSMo 1949, provides:

"In case any person shall usurp, intrude into or unlawfully hold or execute any office or franchise, the attorney general of the state, or any circuit or prosecuting attorney of the county in which the action is commenced, shall exhibit to the circuit court, or other court having concurrent jurisdiction therewith in civil case, an information in the nature of a quo warranto, at the relation of any person desiring to prosecute the same; and when such information has been filed and proceedings have been commenced, the same shall not be dismissed or discontinued without the consent of the person named therein as the relator; but such relator shall have the right to prosecute the same to final judgment, either by himself or by attorney. If such information be filed or exhibited against any person who has usurped, intruded into or is un-

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lawfully holding or executing the office of judge of any judicial circuit, then it shall be the duty of the attorney general of the state, or circuit or prosecuting attorney of the proper county, to exhibit such information to the circuit court of some county adjoining and outside of such judicial circuit, and nearest to the county in which the person so offending shall reside."

Any action in quo warranto at the relation of a private individual, is an action in which the state is a nominal party. However, as appears from Section 531.010 quoted above, the relator is the actual party in interest and is given the right to control the proceeding. Therefore, we do not feel that, because of the nominal interest of the state in the matter, it would be such a matter as the prosecuting attorney would be required to present on behalf of the state in accordance with Section 56.060, RSMo 1949. Consequently, we do not feel that there would be conflict under the duties imposed upon the prosecuting attorney by that section.

However, under Section 531.010 the prosecuting attorney is authorized to exhibit his information in quo warranto upon the relation of any person desiring to prosecute the same. In view of this fact, we feel that, as a matter of public policy, it would be unwise for the prosecuting attorney to be authorized to represent the respondents in actions filed by the Attorney General. While we know that such is not the situation in this case, it appears to us that to sanction such representation by the prosecuting attorney might have a tendency to cause the prosecuting attorney to be reluctant to file actions in quo warranto, and cause the prosecuting attorney rather to depend upon the Attorney General with the hope, or expectation, that he might be called upon to represent the respondents. In view of this situation we feel that the prosecuting attorney should not represent the respondents in such proceedings.

CONCLUSION

Therefore, it is the opinion of this department that the prosecuting attorney should not represent the respondents in a quo warranto proceeding filed in the name of the Attorney General, and brought at the relation of a private individual.

Honorable W. H. Pinnell

This opinion, which I hereby approve, was prepared by
my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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