

CONSTABLES:
ST. LOUIS COUNTY:

No authority exists for the election or the appointment of more than four constables in St. Louis County, regardless of the fact of the creation of five magistrate districts in St. Louis County.



February 16, 1954

Honorable John J. McAtee
County Counselor
Law Department
Courthouse
Clayton, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"St. Louis County, Missouri, presently has four Magistrates and four Constables. Due to the population increase, the Board of Election Commissioners of St. Louis County is presently redistricting the County into five Magistrate Districts, under the provisions of Article V, Section 18 of the Constitution, and the Statutes.

"The number of Magistrates, when the Election Board completes its task, will have been increased from four to five. The question has arisen, however, as to the number of Constables that shall be elected in the County when the present four Districts are changed to five Magistrate Districts.

"The St. Louis County Charter adopted by the voters of St. Louis County in 1950 under the provisions of Article VI, Section 18 (a) of the Constitution, provides in Article II, Section 3:

'The following County Officers shall be elected: Assessor, Circuit Clerk, Collector, four Constables, Coroner, seven Councilmen, County Clerk, heretofore known as the Clerk of the County

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Court, County Supervisor, Highway Engineer, Prosecuting Attorney, Public Administrator, Recorder of Deeds, Sheriff, Superintendent of Schools, and Treasurer.'

"Section 4 provides:

'The above named elective County Officers, except the Superintendent of Schools, shall be nominated and elected for a term of four years in the manner provided for State and County Officers. The Superintendent of Schools shall be elected in the manner provided by law. Each shall have all the powers and perform all the duties provided by law, except as otherwise provided by this Charter.'

"Section 18 (e) of Article VI of the Constitution provides:

'Laws shall be enacted providing for free and open elections in such counties, and laws may be enacted providing the number and salaries of the judicial officers therein as provided by this constitution and by law, but no law shall provide for any other office or employee of the county or fix the salary of any of its officers or employees.'

"Chapter 63 of the Revised Statutes of Missouri, 1949, covers the law relating to Constables in counties of the first class. Section 63.010 provides:

'In all counties of this state of the first class as provided by law there shall be elected at the general election to be held at the first Tuesday, in November, 1946, and each general election every four years thereafter, in each magistrate district in such counties a constable who shall hold office for a term of four years and until his successor is duly elected, commissioned and qualified. ...'

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"Thus, the Statutes of Missouri contemplate and provide for a constable to be elected in each Magistrate District in counties of the first class. Yet, the Charter provides, in Section 3 of Article II for only four Constables. Then follows the provisions of Section 18 (e) of Article VI of the Constitution which sets forth '...no law shall provide for any other office or employee of the county or fix the salary of any of its officers or employees.'

"It would appear, therefore, that despite the number of magistrates and magistrate districts in St. Louis County, there would only be four constables.

"It is difficult to determine what the intention of the framers of the St. Louis County Charter was when they wrote in this provision. Obviously, if they wanted to provide for a constable in each magistrate district they could have so worded the Charter. It was apparent to those gentlemen even then back in 1949 and 1950 that St. Louis County was growing at a rate which would probably soon require a revision of the magistrate districts. On the other hand, because there were four constables at the time the Charter was drafted, they may have just included the number in existence at that time, to be included in the Section on elective County Officers.

"This office would appreciate your opinion on this subject, as to whether or not the creation of an additional magistrate and magistrate district will require the election of an additional constable for the newly created district."

On October 30, 1953, this department rendered an opinion, a copy of which is enclosed, to Honorable Stanley Wallach, Prosecuting Attorney of St. Louis County. The question asked in that opinion request was whether the St. Louis County Council could legally enact an ordinance providing for the appointment of "special deputy constables." In answer to that question you will note in our opinion that we directed attention to Section 18 (e) of Article VI of the Constitution of Missouri, which you also quote in your letter, which refers to a county of more than 85,000 and which provides that laws may be enacted providing the number and salaries of judicial officers, but not for any other

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county office or employee of the county. In that opinion we also held that "special deputy constables" are not judicial officers, from which it would of course follow that a constable is not a judicial officer, since the powers and duties of a "special deputy constable" would be the same as those of constable.

You will also note that in the Wallach opinion we held that all provisions of Chapter 63 RSMo. 1949, purporting to provide for constables and deputies in first class counties operating under a charter form of government, such as St. Louis County, are unconstitutional and of no effect.

We feel, too, that it might be well to call attention to Section 18 (a) of Article VI of the Constitution of Missouri, which reads:

"County Government by Special Charter--
Limitation.--Any county having more than
85,000 inhabitants, according to the cen-
sus of the United States, may frame and
adopt and amend a charter for its own
government as provided in this article, and
upon such adoption shall be a body corporate
and politic."

Also to Section 18 (b) of Article VI, which reads:

"Provisions Required in County Charters.--
The charter shall provide for its amendment,
for the form of the county government, the
number, kinds, manner of selection, terms of
office and salaries of the county officers,
and for the exercise of all powers and duties
of counties and county officers prescribed by
the Constitution and laws of the state."

From the above, it will be seen that the St. Louis County Charter provides for the number and kind of its county officers. As you point out in your letter, that charter, Section 3 of Article II, provides for four constables, which number cannot be increased without an amendment of the charter in that respect. We have examined the charter with a view of determining whether any other portion of it was applicable to the instant situation, and are unable to find any which are applicable.

CONCLUSION

It is the opinion of this department that no authority exists for the election or the appointment of more than four constables in St. Louis County.

Honorable John J. McAtee

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW/ld/vtl

Enclosure