

MAGISTRATES:
BOARD OF ELECTION
COMMISSIONERS:
REDISTRICTING
MAGISTRATE DISTRICTS:
COUNTIES OF SEVENTY TO
ONE HUNDRED THOUSAND:

Additional magistrate in Clay County, Missouri authorized by order of Circuit Court under authority of Section 482.010, does not automatically become the second regular magistrate to which the county is now entitled by virtue of its population; effective as of January 1, 1963, there will no longer be any additional magistrate in Clay County; no particular period of residence in the district from which he is elected is required of a magistrate in order to qualify for the office.

OPINION NO. 57

February 15, 1962

Honorable Richard E. McFadin
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Mr. McFadin:

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

"Please find a copy of questions submitted for opinions, by the Clay County Election Board.

1. Does the Magistrate Court in Clay County, Missouri, created by order of the Circuit Court as of August 1, 1948, for a four-year term, with the present term expiring on December 31, 1962, automatically become the second magistrate required by the state for population provided in Section 482.010 V.A.M.S. on January 1, 1963?

2. If the answer is yes, does it follow that the State becomes responsible for the payment of the salary of the additional magistrate, clerks, etc. on January 1, 1963, and if so, must the Board of Election Commissioners redistrict prior to April 1, 1962, into districts as near equal population wise?

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"3. If the answer is no, to question No. 1, then will Clay County have three magistrate courts on January 1, 1963, divided into districts equal population wise?

"4. If Clay County will have three magistrate courts on January 1, 1963, (two by the State and one by the Circuit Court), may the Circuit Court on proper petition abolish or dissolve the magistrate court created by it and if so when may this be done in order to retain that magistrate court until January 1, 1963?

"5. If the Circuit Court can in 1962 dissolve the magistrate court created by it, effective January 1, 1963, does it follow the Board of Election Commissioners shall divide the county into two districts as near equal in population, and if so, when?

"6. If the answer to No. 4 is No, then does the Election Board divide the county into three districts as near equal in population as possible and when must this be done, and can these districts be altered or dissolved prior to the next election of magistrate judges?

"7. Is a candidate for the office of magistrate required to reside in his district a certain period of time in order to qualify for the office and, if so, for how long?"

We turn first to a consideration of whether the additional magistrate, authorized by order of the Circuit Clerk of Clay County on June 23, 1948, automatically becomes the second magistrate required by Section 482.010, RSMo 1959, for counties with a population over seventy thousand and under one hundred thousand. We hold that he does not.

Section 482.010, RSMo 1959, above referred to, provides for two types of magistrate judges. First, this section requires what might be termed "regular magistrates", i.e. those which a county must have because of its population. Secondly, it provides for "additional magistrates", which may be authorized in addition to the number of "regular magistrates" if the circuit court of the county involved finds that the administration of justice requires it. This classification is exemplified in Section 482.150,

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RSMo 1959, which provides that the salaries of regular magistrates are to be paid by the county. Since these classifications are separate and distinct, we believe that an additional magistrate office cannot be transformed into a regular magistrate office.

Our answer to your first question being in the negative your second question is rendered moot and we next consider the third question propounded in your request - whether Clay County will have three magistrates as of January 1, 1963, and if so whether the county will have to be divided into three magistrate districts with equal population.

The number of magistrates in each county is fixed in our Constitution, Section 18, Article V. Section 482.010, paragraph 1, RSMo 1959, merely copies the constitutional provision. Both the constitution and the statute authorize the Circuit Court upon petition and after hearing to increase the "foregoing number" of magistrates in any county "according to the needs of justice", and similarly to decrease "such increased number". The "foregoing number" obviously refers to the number fixed by the Constitution and statute, namely one magistrate in counties in the thirty to seventy thousand classification and two magistrates in the seventy to one hundred thousand classification.

The order of the Clay County Circuit Court made June 23, 1948, which created the additional magistrate for that county, stated that the number of magistrates was to be increased by one. This could, of course, mean only that the number of magistrates in 1948 required in the interest of justice was two. Now that the situation is changed so that by reason of the increase in population "the foregoing number" is two, the 1948 order authorizing an increase in the number of magistrates from one to two can not be construed to be a finding that the number should be increased from two to three. Bearing in mind the necessity that the court make the finding "according to the needs of justice" it is our opinion that when the county becomes entitled to two "regular magistrates" as of January 1, 1963, the 1948 order is functus officio and no longer of any force or effect. Hence, effective with the incumbency of the new "regular magistrate" there will no longer be any additional magistrate, unless and until the Circuit Court makes a new finding, after a hearing.

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that the needs of justice require that the number of magistrates be increased from two to three (or four).

The next question contained in your request is whether the Clay County Circuit Court has the power to abolish the office of the additional magistrate created on June 23, 1948. You further ask when such abolition should be accomplished in order to retain the additional magistrate until January 1, 1963. Under the reasoning and conclusion stated in answer to the third question contained in your opinion request no such court order would be necessary.

A further question is stated in your request as to whether the Board of Election Commissioners of Clay County should divide the county into two magistrate districts and if so, when. The first part of this question must be answered in the affirmative. A duty is imposed on the Board of Election Commissioners to so divide the county by Section 19, Article V of the 1945 Constitution of Missouri. This same section requires that the duty be performed "after each census". (Note: Because of this mandatory requirement of the Constitution, the statutory requirement contained in Section 482.040, RSMo 1959, that the Board of Election Commissioners divide the county into magistrate districts within sixty days after being "officially informed" that the duty of so doing has arisen, is necessarily directory.) The old districts automatically go out of existence after each census, and the Board must establish two new districts. Of course, if the constitutional requirements are met, the Board could conceivably establish districts with boundary lines identical to those of the present districts.

The last question contained in your request is whether a candidate for the office of magistrate is required to reside within his district for a certain period of time in order to qualify for office.

Section 482.040, paragraph 2, RSMo 1959, states only that, after division of a county into magistrate districts, one magistrate shall be elected in each "who shall be a resident of the district in which he is elected." The rule followed in Missouri absent specific requirements as to eligibility as of date of election is that the eligibility of an officer is to be determined as of the time of commencement of the term. See State ex inf. Mitchell ex rel Goodman v. Heath, (1939) 345 Mo. 226, 132 SW 2d 1001, i.e. 1005 and State ex inf. Major ex rel

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Ryors v. Brauer (1911) 235 Mo. 240, 138 SW 515.

It is further to be noted that Section 482.050, RSMo 1959, requires each magistrate to "qualify" and enter upon the discharge of his duties on January 1 following his election. This statute further provides that in case the judge elect "refuse to qualify" such refusal shall constitute a vacancy in the office "from and after the date on which such judge-elect is required to qualify." Reading all of the statutes together and in the light of the policy of Missouri to require eligibility to be determined as of the date of commencement of the term we hold that a candidate for the office of magistrate is not required to reside in his district for any particular period of time prior to qualifying for the office.

CONCLUSION

It is the opinion of our office that the additional magistrate in Clay County, Missouri does not automatically become the second regular magistrate to which the county is now entitled by virtue of its population; we further hold that effective as of January 1, 1963, there will no longer be any additional magistrate. Finally, we hold that no particular period of residence in the district from which he is elected is required of a magistrate in order to qualify for the office.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Ben Ely, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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