

February 6, 1962

FILED
89

Honorable Don E. Burrell
Prosecuting Attorney
Greene County
Springfield, Missouri

Dear Mr. Burrell:

You have requested the views of this office concerning the necessity of holding a public hearing under the provisions of Section 22.050, RSMo 1959, before the county court may establish representative districts after receipt of official certification from the Secretary of State of the number of representatives to which your county is entitled.

We enclose opinions of this office to Paul C. Calcaterra dated August 29, 1951, and to George H. Morgan, dated December 27, 1961, which rule that after each decennial census the former representative districts go out of existence and that it is the duty of the county court (or Board of Election Commissioners) to establish new districts. That such duty is mandatory is clear under the provisions of Section 3, Article III of the Constitution and Section 22.050 which implements the constitutional provision. Section 3 of Article III of the constitution provides in part:

"When any county is entitled to more than one representative the county court * * * shall divide the county into districts * * *."

The word "when", as used in this provision of the Constitution, means "at the time that". State ex rel Major v. Patterson, 229 Mo. 373, 129 SW 888, l.c. 891. And since Section 10, Article III of the Constitution provides that the last decennial census shall be used in apportioning representatives, this can mean only that

at the time it appears from the last decennial census the county is entitled to more than one representative, it then becomes the duty of the county court to divide the county into representative districts based upon the population figures contained in such census.

Section 22.050 expressly provides that within 60 days after being officially informed of the number of representatives to which the county is entitled, the county court shall divide the county into representative districts.

The further provision of Section 22.050 authorizing the county court to alter districts one time after each decennial census after a public hearing relates only to a change in the boundary lines of the districts once they have been established and does not refer to the original creation of such districts. This because the duty to divide the county into districts must be complied with in all events, not because of a finding that "public convenience" so requires, but because our Constitution itself makes such requirement. On the other hand, once the districts have been established, any alteration or change therein can be made only upon a finding by the county court, after a public hearing, that "public convenience" requires such alteration. Absent a statute such as Section 22.050 authorizing the county court to make an alteration of the boundaries of a district and prescribing the conditions therefor, the county court would have no authority to make any alteration in a district which it had theretofore established pursuant to the constitutional mandate. This is made clear by our Supreme Court in the Patterson case, in which the court stated, 129 SW 1.c. 892:

"* * *In other words, the Constitution contemplates that these districts shall be established at decennial periods, but has reserved a power in the Legislature to provide by law for a change in the same. This upon the theory that there is a difference between dividing a county into districts, and afterward changing the boundary lines of those districts. That this power is reserved to the Legislature is further emphasized by the fact that section 9 does not, within itself, undertake to prescribe the conditions under which the changes or alterations should be made. Nor does it undertake to prescribe the method of determining the requisites for

such changes. These things were evidently left for legislative determination, * * *

As will appear from the foregoing, it is the view of this office that no public hearing is necessary before the county court establishes representative districts after the decennial census, and that the failure to hold such a hearing before establishing such representative districts after being informed by the Secretary of State of the necessity therefor does not invalidate the districts so created.

Yours truly,

THOMAS F. EAGLETON
Attorney General

JN:ms