

JUSTICE OF THE PEACE: 1. Resignation from the office of justice of the  
MAGISTRATES: peace served to create a vacancy in the office.  
OFFICERS: 2. A person not a lawyer who had neither served  
VACATING OFFICE: as a justice of the peace for four years prior to  
nor had been serving as a justice of the peace on  
the adoption of the 1945 Constitution, cannot  
qualify to serve in the office of magistrate.

June 22, 1962

Opinion Request No. 196  
(McFadden)

Honorable Frederick E. Steck  
Prosecuting Attorney  
Scott County  
Sikeston, Missouri



Dear Mr. Steck:

This is in response to your recent request to this office for an opinion which, so as to avoid misunderstanding, I will paraphrase as follows:

A man, not a lawyer, who served as a justice of the peace from May 1942 until May 1944, at which time he resigned and was inducted into the United States Army, has now filed as a candidate for magistrate of your county.

The questions presented are: Did resignation from the office of justice of the peace for the purpose of entering the United States Army create a vacancy in the office? Can one who resigned for that purpose before 1945 who had not prior thereto served four years as a justice of the peace, now qualify to serve as a magistrate?

The Constitution of Missouri, 1945, Article V, Section 25 provides in part:

" . . . Every judge and magistrate shall be licensed to practice law in this state, except that probate judges now in office may succeed themselves as probate judges without being so licensed, and except that persons who are now justices of the peace, or who have heretofore been justices of the peace in this state for at least four years, shall be eligible to the office of magistrate without being so licensed."

The Constitution containing the foregoing provisions was adopted in 1945.

Honorable Frederick E. Steck

The question as to vacating the office disappears when viewed in the light of Mansur vs. Morris, 196 SW 2d 287, 1. c. 290, where one who had resigned his office of justice of the peace for the purpose of entering the Armed Forces was treated as having created a vacancy, whereas on the other hand one who had been inducted into or joined the Armed Forces without resigning was treated as not having created a vacancy in the office.

Thus under the facts presented the person in question vacated his office in May 1944 by resignation and therefore cannot be said to have been serving as a justice of the peace when the new Constitution was put into effect.

Furthermore, since the person in question served as a justice of the peace only from May 1942 to May 1944, which is two years, he could not qualify upon the ground that he had served four years as a justice of the peace prior to the inception of the 1945 Constitution.

Clearly the individual treated here, who is not a lawyer, could not qualify to serve as a magistrate if elected to that office.

#### CONCLUSION

1. Resignation from the office of justice of the peace served to create a vacancy in the office.
2. A person not a lawyer who had neither served as a justice of the peace for four years prior to, nor had been serving as a justice of the peace on the adoption of the 1945 Constitution, cannot qualify to serve in the office of magistrate.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Howard L. McFadden.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

HLM:MW