

June 18, 1962



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

Dear Sir:

We are in receipt of your letter of May 22, 1962, wherein you request an opinion of this office as follows:

"A question has arisen as to the interpretation of the Rules of practice and procedure in municipal courts, with particular reference to Rule 37.90 and 37.91.

"In a case involving alleged violation of an ordinance of the City of Ash Grove, Missouri, an affidavit disqualifying the Municipal Judge at Ash Grove was filed pursuant to Municipal Rule 37.90. The question then arose as to who would be considered 'another Judge authorized by law to hear such case' in accordance with Rule 37.91. We need an opinion as to whether the case should be transferred and removed to (1) a Magistrate Judge in Greene County, Missouri, (2) a Circuit Judge in Greene County, or (3) a Municipal Judge of another Municipality located in this county.

"We will appreciate the advices of your office with respect to the proper

Judge to whom the case should be transferred and removed."

We note from the 1961-1962 Blue Book of the State of Missouri (p. 1075) that the City of Ash Grove, Missouri, is a city of the fourth class. Section 98.500, RSMo 1959, which deals with the office of police judge in cities of the fourth class, reads as follows:

"The mayor and board of aldermen of cities of the fourth class may, by ordinance, provide for the election of police judges in such cities, who shall be elected at the regular city elections, and who shall, when so elected, have exclusive jurisdiction to hear and determine all offenses against the ordinances of the city in which he was elected; provided, that when such police judges shall be so elected, then the jurisdiction in sections 98.500 to 98.660 herein conferred on the mayor to hear and determine cases for the violation of city ordinances shall be held to refer to the police judge elected under this section; provided further, that in case of the absence, sickness, or disability in anywise of such police judge, or in case of vacancy in such office, the mayor shall perform all such duties until the disability is removed or the vacancy is filled."

Inasmuch as this section provides that the mayor of a fourth class city having a police judge shall perform the duties of the police judge during the "absence, sickness or disability in anywise" of the police judge, it is our opinion that the mayor would therefore be the other judge authorized by law, as provided in Supreme Court Rule 37.91, to sit during the disqualification of the police judge.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General