

CONSTITUTIONAL LAW:
NON-PARTISAN COURT PLAN:
COURTS:
MAGISTRATES:
PROBATE JUDGES:
ELECTIONS:
ST. LOUIS COUNTY:
CIRCUIT COURTS:

The non-partisan court plan can be extended to St. Louis county and other circuits by statute. Non-partisan court plan can be adopted without including magistrates in such plan. Non-partisan court plan can be adopted without including office of probate judge and ex officio magistrate. Non-partisan court plan can be adopted in St. Louis county without submitting question to voters.

February 5, 1963



Honorable William B. Waters
State Senator, 17th District
Capitol Building
Jefferson City, Missouri

Dear Senator Waters:

We have your opinion request posing various constitutional questions on the possible extension of the non-partisan court plan to St. Louis county and possibly one or two other circuits.

It has long been the policy of this office to defend the various statutes passed by the legislature whenever the constitutionality of a statute is brought into question in a matter in which we are involved. If the Attorney General were to rule that a statute was unconstitutional and then in a subsequent law suit turn around and argue in favor of the constitutionality of same, he would be placed in an almost untenable position.

Further, as in this instance when the legislature is aware of possible constitutional attacks which might be made on a given statute and decides to enact legislation in light of same, then we feel that we should not substitute our notions of constitutionality for those of the legislature, but should to the best of our ability defend the action of the legislature.

Finally, of course, there exists the general rule of law that a statute is presumed to be constitutional and we are loathe in debatable gray areas to unilaterally overrule this presumption.

The foregoing constitute general observations which can be made whenever we are asked about the constitutionality of a statute.

Your questions are further complicated by the fact that the Missouri Supreme Court specifically raised some of these questions in the case of State ex rel. Millar v. Toberman, 232 SW2d 904, but declined to answer them labeling them as "uncertainties" requiring "further study."

Honorable William B. Waters

Therefore, it is entirely likely that whatever course the legislature might pursue in extending the non-partisan court plan to St. Louis county and possibly one or two other circuits will result in a court test wherein our office will be called upon to defend the legislation or procedure in question.

Thus, as is frequently true in constitutional areas which are more often than not in the debatable gray area rather than in the black or white category, our answers to your questions are in the main necessarily something less than categorical.

Question #1. "Is it constitutionally possible to achieve the purposes of the bill under Section 29 (a) through (g), Article 5 of the 1945 Constitution by statutory enactment and without the submission of a constitutional amendment specifically amending Section 29 (a)?"

This we will attempt to answer unqualifiedly. We see no necessity to submit a constitutional amendment on Section 29 (a) in order to achieve the purposes of the bill.

Question #2. "Is it constitutionally possible to eliminate Magistrate courts from coverage under the non-partisan court plan in the counties seeking to come under the same? This question is raised, inasmuch as, since the adoption of the 1945 Constitution, Magistrate courts have been, by legislative action, designated as courts of record."

This is one of the questions the answer to which the Missouri Supreme Court labeled as "uncertain" and requiring "further study." Debatable as it may be, it is our view that a reasonable argument can be made in support of the constitutionality of same and we would make such an argument when and if litigation should develop.

Question #3. "In the event circuits containing the combination office of Probate-Magistrate court seek inclusion under the proposed legislation, is it further possible to eliminate their inclusion as aforesaid? Your attention is directed to the fact that under the Constitution, Probate courts are courts of record."

Honorable William B. Waters

Our answer is the same as with respect to Question #2.

Question #4. "Should the General Assembly merely enact legislation directing that the Circuit courts and Probate court of St. Louis county be under the non-partisan court plan without any submission of the question to the voters, would it be constitutional under Section 29 (g)?"

We take this question to mean, in essence, can the legislature, if it sees fit, by-pass the procedures as spelled out in Section 29 (a) through (g) and merely by statute, without submitting the question to the voters, extend the non-partisan court plan to St. Louis county?

Debatable as it may be, it is our view that a reasonable argument can be made in support of the constitutionality of same and we would make such an argument when and if litigation should develop.

Finally, we wish to mention the fact that the foregoing answers given to your general questions can well be influenced by and depend upon the precise language of the bill which ultimately may pass the legislature.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

TFE: jh