

LIEUTENANT GOVERNOR: Section 26.020, RSMo 1959, does not
GENERAL ASSEMBLY: prohibit Lieutenant Governor from
STATUTES: employing two secretaries.

OPINIONS NOS. 186, 187

*Copies
in
vault*

May 15, 1963

Honorable Hilary A. Bush
Lieutenant Governor

Honorable Paul M. Berra
Chairman, House Appropriations
Committee

Capitol Building
Jefferson City, Missouri



Gentlemen:

Both of you have written to me concerning the same question and in the interest of simplification I shall quote from Representative Berra's letter as follows:

"In checking the current Blue Book, it has come to my attention that the office of Lieutenant Governor is employing 2 secretaries. There is no doubt in my mind that 2 secretaries are needed, but I am wondering if there is a violation of Section 26.020."

Section 26.020, RSMo 1959, to which you make reference, is as follows:

"Within the limits of appropriations for such purpose, the governor may employ and fix the compensation of such legal and clerical assistants as may be necessary for the efficient conduct of his office. The lieutenant governor may likewise employ and fix the compensation of a secretary."

Before reaching the merits of your question, I believe I should state the obvious, namely to point out that I have filed as a candidate for the office of Lieutenant Governor

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in next year's election. Thus, your question as to the number of secretaries the Lieutenant Governor may employ is one in which I have a prospectively hopeful personal interest. Were I a judge, this interest would be sufficient to cause me to disqualify myself from passing on the issue. However, our law requires the Attorney General to render official opinions to certain public officials, including members of the General Assembly, and no provision is made for anyone else to issue an opinion in the event the Attorney General disqualifies himself due to an interest in the subject matter. Therefore, I must apply the legally established "rule of necessity" and render the opinion which you have requested. (See *Evans v. Gore*, 253 US 245, where the United States Supreme Court found it necessary to rule on a question involving taxation of the Justices' own salaries.)

Turning, then, to the question which you present, we must determine the intention of the Legislature in authorizing the Lieutenant Governor to appoint "a secretary". If the article "a" is construed to mean "one", then it would appear that the Lieutenant Governor is presently employing personnel in excess of the statutory authorization. If, however, it appears that the term was not used as a numerical limitation, we may say that the Lieutenant Governor is authorized to employ secretarial help as needed, within the limits of his appropriation.

In the often-cited and leading case of *State ex rel. Attorney General v. Martin*, 60 Ark. 343, 30 SW 421, the Supreme Court of Arkansas was faced with a very similar question. The Constitution of the State of Arkansas provided that "The state shall be divided into convenient circuits, each circuit to be made up of contiguous counties, for each of which circuits a judge shall be elected. . . ." (Emphasis added.)

The Legislature provided for the appointment of an additional judge for one of the circuits due to the great press of judicial business in that circuit. The contention was made that the constitutional language provided for the election of but one judge for each circuit and that the legislative action was therefore unconstitutional. The court ruled to the contrary, stating (l.c. 422):

"Now, the adjective 'a,' commonly called the 'indefinite article,' and so called, too, because it does not define any particular person or thing, is entirely too indefinite, in the connection used, to define or limit the number of judges which the legislative wisdom may provide for the judicial circuits of the state. And it is perfectly obvious that its office and meaning was well understood by the framers of our constitution, for nowhere in that instrument do we find it used as a numerical limitation."

The court went on to say (l.c. 425):

"But we are of the opinion that this grammatical particle 'a,' whose office is frequently only to preserve euphony in the use of words and structure of sentences, and whose force often depends upon the mere accident of accentuation, was not used, nor was it ever intended to be used, by the framers of our organic law, so as to obstruct and partially defeat the exalted purpose for which the circuit courts, the 'great residuum of all jurisdiction,' were created, namely, the speedy administration of public justice."

An almost identical question was presented to the Supreme Court of Oklahoma more recently in *Dobbs v Board of County Commissioners of Oklahoma County*, 208 Ok. 514, 257 P2d 802. There, too, the Constitution provided for the election of "a County Judge" in each county and the Legislature sought to provide for two such judges in each county having a population of 300,000 or more. The court adopted the reasoning of the Supreme Court of Arkansas in *State v. Martin*, supra, and held that the term "a" was not to be construed as a numerical limitation and that the Legislature was empowered to enlarge upon the number of judges to be elected in each county.

Another case construing the term here in question is *Lindley v. Murphy*, 387 Ill. 506, 56 NE2d 832, 838, where the Supreme Court of Illinois stated:

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"The article 'a' is generally not used in a singular sense unless such an intention is clear from the language of the statute, 1 C.J.S., A p. 1; * * *. We agree with plaintiffs that the article 'a' refers not to quantity but, instead, to the quality or nature * * *."

See, also, First Trust Joint Stock Land Bank of Chicago v. Armstrong, 222 Ia. 425, 269 NW 502, and In re Application of Hotel St. George Corp., 207 N.Y.S.2d 529, 531.

Our own courts have also had occasion to consider this problem. In State ex rel. Crown Coach Co. v. Public Service Commission, 238 Mo. App. 287, 179 SW2d 123, the statute provided:

" * * * that the issuance of a certificate of convenience and necessity to one carrier shall not prohibit the granting of such certificate to another carrier over the same route if in the opinion of the commission the public convenience and necessity will be promoted by so doing." (Emphasis added.)

The contention of the appellants was stated by the Court of Appeals as follows (l.c. 127):

"It is argued that when the statute provided for the issuance of 'a' certificate that 'a' meant one, and that the Commission may grant a certificate to 'another' or 'some other' carrier means 'one more, in addition'. From this premise, appellants assert that the Commission is powerless to grant a certificate to more than two carriers over the same route regardless of what the evidence may show with respect to the service rendered the public."

The court ruled against this contention, pointing out that Section 652, R.S. Mo. 1939, provided that:

"When any subject-matter, party or person is described or referred to by

words importing the singular number
* * * several matters and persons,
* * * shall be deemed to be included.'"

The court held, therefore, that the article "a" need not necessarily denote the singular.

This rule of statutory construction that words denoting the singular also include the plural is still a part of our law. Section 652 of the 1939 Statutes, quoted above, has been carried over to the present statutes as Section 1.030(2), RSMo 1959, with no significant change in its terms.

From the foregoing it can be seen that not only have the courts held that the term "a" is not necessarily a limitation as to number and does not denote "one" in every case, but also that our law provides that the use of a term in a statute which might be thought to import the singular may include the plural.

With these rules in mind, we turn to the section in question, Section 26.020, RSMo 1959, and look to its legislative history for assistance in determining its meaning.

This section was drafted in 1949 as a part of a general revision of the statutes conducted by the 65th General Assembly. In preparing the revision bill from which this section was derived (S.B. 1008, 65th Gen. Ass.), the revisors stated as follows (House and Senate Journals, Vol. III, 65th Gen. Ass. p. 30):

"There appears to be no statutory provisions authorizing the governor or lieutenant governor to employ any clerical, secretarial or other assistants. Prior to 1939 Section 13390 provided a salary for the secretary to the governor and it still provides salaries 'for other clerks in the office of the governor.' Laws 1939, p. 676, reenacted this section without any provision for a salary for the secretary to the governor. It is suggested, in view of this situation, that a section be enacted authorizing the governor and lieutenant governor to employ such assistants as are necessary and authorizing the fixing of their compensation."
(Emphasis added.)

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Following this comment, the Revision Committee proposed a section in the form now found as Section 26.020. It appears that those drafting the statute intended to authorize both the Governor and Lieutenant Governor to appoint assistants as needed.

Keeping in mind the above-quoted authorities holding that the word "a" does not normally mean "one" in the context of a provision such as Section 26.020, and having gleaned the legislative intent from the comments of the framers of the statute, I am led to the conclusion that this section does not limit the Lieutenant Governor to the appointment of but one secretary and that he may employ secretarial assistants as needed.

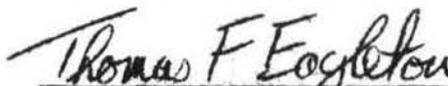
I am supported in this conclusion by what appears to be an identical interpretation placed on Section 26.020 by recent sessions of the General Assembly. In each, the 69th, 70th and 71st General Assemblies, the amount of \$7,200.00 annually in excess of the Lieutenant Governor's salary was appropriated for the payment of salaries in the Lieutenant Governor's office. (L. 1957, p. 97, L. 1958, 2d Ex. Sess., p. 27; L. 1959, H.B. No. 62, §4.140; L. 1961, p. 64.) The Blue Book for each of the periods covered by these appropriations shows that these sums were used for the payment of two secretaries' salaries. Thus, the General Assembly has evidently construed Section 26.020 as authorizing the Lieutenant Governor to employ more than one secretary.

As Representative Berra points out in his letter, there is no doubt that the duties of the Lieutenant Governor necessitate the employment of more than one secretary. This is not to say, however, that there are no limitations placed upon the Lieutenant Governor in the employment of his staff. Section 26.020 authorizes appointments by the Governor and Lieutenant Governor only "within the limits of appropriations for such purpose."

CONCLUSION

It therefore is my opinion that there is no statutory prohibition barring the Lieutenant Governor from the employment of more than one secretary, if the money appropriated to him for that purpose is sufficient for the payment of such additional salaries.

Yours very truly,


THOMAS F. EAGLETON
Attorney General

JJM:ML