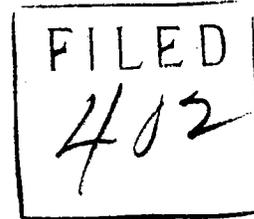


Answer by letter-Wieler  
1969

OPINION LETTER NO. 402

Honorable Guss C. Salley  
State Representative, District 116  
State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Salley:

This is in response to your request for an opinion from this office concerning the following two questions:

"(1) Can the State Liquor Laws be enforced in a 4th Class City by the Chief of Police and the Police Judge in City Court when there is no City Ordinance covering the matter?

"(2) Is it permissible for the Prosecuting Attorney to represent the Defendant in City Court in a 4th Class City in his County with reference to the above or any other violation?"

Although Secs. 85.610 and 85.620, RSMo 1959, allow the police in a fourth class city to make arrests for any offense against the laws of the city or of the state within their jurisdiction, and to keep the offender in the city prison or other proper place to prevent his escape until a trial can be had before the proper officer, the municipal court of a fourth class city has no power to hear and decide the case when there is no city ordinance covering the offense. Sections 98.500 and 98.510, RSMo 1959, limit the jurisdiction of the police judge to those offenses which involve a violation of city ordinances. Since you state in your letter that there is no city ordinances covering this particular violation of the state liquor laws, this matter cannot be tried in the municipal court.

Since state liquor laws cannot be enforced in a municipal court when there is no city ordinance dealing with the matter, it will not be necessary to discuss the second point raised in your request with respect to the county prosecuting attorney representing the

Honorable Guss C. Salley

particular defendant involved. Generally, however, we note that Sec. 56.360, RSMo 1959, prohibits the prosecuting attorney from accepting employment by any party other than the State of Missouri in any criminal case or proceeding; provided, that nothing in this section precludes him from engaging in the civil practice of law. Proceedings in municipal courts for violation of city ordinances have been held to be civil actions, not criminal. See *Kansas City v. Stricklin*, 428 S.W.2d 721, 724 (Mo. en banc 1968). This being so, the actions of a prosecuting attorney in representing a defendant in a municipal court proceeding would not involve any violation of a Missouri statute. Whether the activities of a prosecuting attorney in representing a defendant in a municipal court where the offense alleged involves facts which could also constitute a violation of state law, the prosecution of which would be the duty of the prosecuting attorney under Sec. 56.060, RSMo 1959, involve a breach of the canons of ethics as promulgated by the Missouri Supreme Court (specifically Missouri Supreme Court Rule 4.06 dealing with conflicting interests) should be referred to the Advisory Committee of the Missouri Bar Association for their opinion thereon.

Yours very truly,

JOHN C. DANFORTH  
Attorney General