

September 28, 1970

**OPINION LETTER NO. 390**

Answer by letter, Voigts

Honorable Vic Downing  
Representative, District 160  
Rural Route No. 1  
Bragg City, Missouri 63827



Dear Representative Downing:

This is in response to your request for the opinion of this office as to the existence of any constitutional infirmities with respect to House Bill No. 551, 75th General Assembly. We are advised this bill passed the House, however, it died on the Senate calendar. You state the present inquiry is motivated by your intention to introduce the bill at the next General Assembly. House Bill No. 551, 75th General Assembly, would repeal Sections 482.010, RSMo 1959, and 481.200 and 482.150, RSMo Supp. 1967, relating to magistrates and to enact in lieu thereof three new sections relating to the same subject.

One of the changes which would be effected is set forth in the proposed bill as Section 482.010(2), which provides:

"2. In counties of (thirty) (forty-five) forty-two thousand inhabitants or less the probate judge shall be the judge of the magistrate court. In counties of more than (thirty) (forty-five) forty-two thousand and not more than seventy thousand inhabitants there shall be one magistrate. . . ."

The proposed bill is in conflict with the provisions of Article V, Section 18, Constitution of Missouri, 1945, which provides, as follows:

"There shall be a magistrate court in each county. In counties of 30,000 inhabitants

Honorable Vic Downing

or less, the probate judge shall be judge of the magistrate court. In counties of more than 30,000 and not more than 70,000 inhabitants, there shall be one magistrate. In counties of more than 70,000 and less than 100,000 inhabitants there shall be two magistrates. In counties of 100,000 inhabitants or more there shall be two magistrates, and one additional magistrate for each additional 100,000 inhabitants, or major fraction thereof. According to the needs of justice the foregoing number of magistrates in any county may be increased by not more than two, or such increased number may be decreased, by order of the circuit court on petition, and after hearing on not less than thirty days public notice. The salaries of magistrates shall be paid from the source or sources prescribed by law."

Therefore, because the proposed bill is not a supplement to the constitutional provision but, rather, attempts to modify such constitutional provision, the proposed bill, if enacted, would be unconstitutional. *State ex rel. Randolph County v. Walden*, 206 S.W.2d 979 (Mo. banc 1947). The change which you seek to effect can be accomplished only by constitutional amendment.

Very truly yours,

JOHN C. DANFORTH  
Attorney General