

OPINION LETTER NO. 84  
Answer by letter-Klaffenbach



Mr. William J. Raftery, Director  
Division of Accounting  
Office of Administration  
Room 121, Capitol Building  
Jefferson City, Missouri 65101

Dear Mr. Raftery:

This letter is in response to your question asking:

"Is the effective date of office of Division 2 of Judicial Circuit #20 January 1, 1975 as indicated in House Bill 964 passed in the Second Regular Session of the 77th General Assembly or January 6, 1975 as would be the effective date using Section 478.010 RSMO 1969 as a reference?"

House Bill No. 964 to which you refer provides:

"SECTION 1. 1. Beginning on January 1, 1975, the circuit court of the counties of Franklin, Gasconade and Osage, composing the twentieth judicial circuit, shall be composed of two judges. Each judge shall separately try causes, exercise the powers, and perform all duties imposed upon circuit judges. The divisions of the circuit court shall be 'Circuit Court Division Number One' and 'Circuit Court Division Number Two'.

"2. The judge of division two shall be elected at the general election in 1974 for a six-year term and candidates shall be nominated in the same manner as provided in Section 120.550, RSMo 1969, for that election

Mr. William J. Raftery

only and the judge of division one shall be elected at the general election in 1976 for a six-year term, and their successors shall be elected for six-year terms. The circuit judge of the twentieth judicial circuit on the effective date of this act shall not be affected by its provisions other than to become the judge of division one on January 1, 1975, and to serve as circuit judge of division one until his successor is duly elected and qualified.

"3. The method of assignment of cases and terms of court between the divisions shall be determined by court rule. When a judge is not occupied with other business of the court or his division, he shall, as far as practicable, aid the other judge."

Section 478.010, to which you refer, provides in pertinent part:

"1. Except as provided in section 29 of article V of the constitution of Missouri, the circuit judges of the various judicial circuits shall be elected at the general elections as herein provided and at the general election every six years thereafter, and shall enter upon the duties of their office on the first Monday in January next following their election."

The reference in the above section to Section 29, Article V, is not pertinent here.

The provisions of Section 478.010 respecting the six-year term for circuit judges is consistent with Section 23, Article V of the Constitution which provides for such terms.

Our review of the legislative history of House Bill No. 964 indicates that such bill, as introduced, provided in part that:

"The judge of division two shall be appointed prior to January 1, 1975, shall become circuit judge of division two on January 1, 1975, and shall serve as circuit judge of division two until his successor is duly elected and qualified, as provided in this section. The judge of division two shall be

Mr. William J. Raftery

elected at the general election in 1978  
for a six-year term and . . ."

It is apparent that the difficulty in the language used in the bill as truly agreed to and finally passed came about because of the amendment in passage which now provides for the election of a judge at the general election in 1974 for a six-year term instead of for the election of a judge at the general election in 1978 for a six-year term.

We note that nothing in the truly agreed to and finally passed version of the bill provides that the elected judge will take office on January 1, 1975. The first section of the bill creates an additional office of circuit court judge on the first day of January, 1975.

It is true that previous enactments creating new circuit judge offices have referred to "the first Monday in January," and provided for the election of the new incumbents to take office on "the first Monday in January" following such election. See Sections 478.625 and 478.700, RSMo Supp. 1973. Both of these prior sections were, therefore, consistent with the provisions of Section 478.010 quoted above.

However, it is our view that, in the absence of clear provisions to the contrary, the bill must be read in conjunction with the provisions of Section 478.010. To construe such bill as authorizing the elected judge to take office on the first day of January contrary to the provisions of Section 478.010 would not be in harmony with the legislative intent because an unusual and absurd situation would exist in that the judge of the new division would, under such interpretation, take office with a term beginning and ending at times different than other similar offices or a term beginning at a different time but ending beyond the six years prescribed by the Missouri Constitution.

Since, as we have noted, there is no express provision in the bill that the judge take office January 1, it is our view that a vacancy existed in such office between the effective date of the creation of the office and January 6, the first Monday of 1975, which vacancy could have been filled by appointment. However, no such appointment was made. Thus, such judge's compensation commences January 6, 1975.

Finally, we note that any acts of the judge who was elected in November, 1974, between January 1 and January 6, 1975, were the acts of a de facto officer holding office under color of authority and as such were valid acts. State ex rel. Cosgrove v. Perkins, 40 S.W. 650, 652 (Mo. 1897).

Mr. William J. Raftery

Therefore, the judge elected to fill the office of the newly-created judge of Division Two of the Twentieth Judicial Circuit under House Bill No. 964, Second Regular Session, 77th General Assembly, began his term of office the first Monday in January, 1975, and his compensation commenced as of that date.

Yours very truly,

JOHN C. DANFORTH  
Attorney General