OFFICERS: Office of magistrate is constitutional office
                  and persons aspiring to such office should file
MAGISTRATES: declarations with county clerk.

April 20, 1946

Honorable Wilson Bell
Secretary of State
Jefferson City, Missouri

Dear Sir:

     This department acknowledges receipt of your letter request-
ing an official opinion, which reads as follows:

> "Complying with your suggestion of today, I
> am attaching hereto a letter from A. M. Harlan,
> an Attorney of Sedalia which is self-explana-
> tory. Will you kindly furnish this office with
> an opinion as to whether the Office of Magis-
> trate in the County of Pettis, with a population
> of 33,000 is a state office or a county office."

     In connection with your request we also quote the letter
sent to you by Mr. A. M. Harlan of Sedalia, Missouri, which reads
as follows:

> "I have announced through the County Clerk, as
> a candidate for Judge of the newly constituted
> Magistrate Court, and I am in a quandary as to
> whether or not I have made announcement through
> the proper source.
>
> "There has been some discussion as to whether
> this office is to be placed in the catagory of
> a State or County office.
>
> "If this question has been passed upon, will you
> please advise me, and if not would you request
> an opinion from the Attorney General.
>
> "Please reply as promptly as is convenient."

     Section 18, Article V, Constitution of 1945, creates the
magistrate courts and provides as follows:

> "Magistrate Courts--Probate Judges--Number
> of Magistrates--Salaries.--There shall be
> a magistrate court in each county. In
> counties of 30,000 inhabitants or less, the
> probate judge shall be judge of the magis-
> trate 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 pre-
> scribed by law."

This section supersedes Section 37, Article VI, Constitution of
1875, which reads as follows:

> "Justices of the peace.--In each county there
> shall be appointed, or elected, as many jus-
> tices of the peace as the public good may re-
> quire, whose powers, duties and duration in
> office shall be regulated by law."

The General Assembly is given the power to provide for the
administration of magistrate courts in Section 21, Article V,
Constitution of 1945, which reads as follows:

> "Magistrate Courts--Administration.--The general
> assembly shall provide for the administration of
> magistrate courts consistent with this Constitu-
> tion."

Pursuant to this grant of power the General Assembly adopted
Senate Bill 207. Section 7 of Senate Bill 207 provides for the
transfer of duties and authority from justices of the peace to
magistrates and, in part, reads as follows:

> "* * * All justices of the peace of this state,
> at the expiration of their present terms of
> office, shall immediately thereafter deliver to

> the clerk of the magistrate court of their
> county or district in which their courtroom
> is located all dockets, records, books,
> papers and documents appertaining to their
> offices, or relating to any suit, matter or
> controversy committed to them in their
> official capacity, and the magistrate for
> any county or district upon entering upon
> the duties of his office shall be entitled
> to such books, papers, and records in and
> appertaining to any office of the justice
> of peace then, or thereafter, becoming vacant
> in said county or district."

Under this section the magistrates assuming the duties of
their office will take possession of all dockets, records, books,
papers and documents appertaining to the offices of justices of
the peace, and will take over the duties of the justices of the
peace upon the expiration of their present terms of office.

In the case of State ex rel. Rowan v. Pollock, 310 Mo. 620,
276 S.W. 20, there was involved the question of the jurisdiction
of the justice of the peace. The court, in defining the office
of justice of the peace, said the following, at S.W. l.c. 21:

> "The office of justice of the peace is a con-
> stitutional office, and is provided for by
> section 37 of article 6 of our Constitution
> thus:
>
> "'In each county there shall be appointed, or
> elected, as many justices of the peace as the
> public good may require, whose powers, duties
> and duration in office shall be regulated by
> law.'"

In the case of Wilson v. Walters, 112 Pac. (2d) 964, the
term "constitutional officers" was defined as follows:

> "* * * Constitutional officers are persons who
> duly occupy by appointment or election consti-
> tutional offices. A constitutional office as
> distinguished from a municipal or legislative
> office is one created or provided for by the
> Constitution * * * * * * * * * * * * * * * *"

It is, therefore, our notion that the office of magistrate,
which has been created by our present Constitution, is a consti-
tutional office. And, by the same token, magistrates would be
constitutional officers.

The jurisdiction given each magistrate is coextenstive with his county. Section 19, Article V, Constitution of 1945, provides as follows:

"Magistrate Districts--Jurisdiction of District Magistrates--Organized Magistrate Courts.--After each census of the United States the boards of election commissioners, or if none, the county courts, shall divide counties having more than one magistrate into districts of compact and contiguous territory, as nearly equal in population as may be, in each of which one magistrate shall be elected. Each of such magistrates shall have jurisdiction coextensive with the county, and the magistrates may organize into a court or courts with divisions."

Section 8 of Senate Bill 207 defines the jurisdiction of magistrates as follows:

"Each magistrate shall have jurisdiction coextensive with his county and the magistrates may organize into a court or courts with divisions."

Although the office of magistrate is a constitutional office, we are constrained to say that, between a state office and a county office, the office of magistrate more closely resembles a county office in view of the fact that the jurisdiction of each magistrate is only coextensive with his county.

Section 11553, R. S. Mo. 1939, provides for the manner in which a person who aspires to public office shall file his declaration, and reads as follows:

"No person shall file more than one written declaration indicating the party designation under which his name is to be printed on the official ballot, and all declaration papers shall be filed as follows:

"1. For state officers, representatives in congress, courts of appeals and circuit judges, and those members of the senate and assembly whose districts comprise more than one county, in the office of the secretary of state.

"2. For officers to be voted for wholly within one county or in the city of St. Louis, in the

> office of the county clerk of such county
> or the office of the election commissioners
> of the city of St. Louis."

As previously decided, the office of magistrate is a constitutional office, and persons seeking such office will be voted for wholly within one county. Consequently, their declarations should be filed in the office of the county clerk, in compliance with Paragraph 2, of Section 11553, supra.

Conclusion

It is, therefore, the opinion of this department that the office of magistrate is a constitutional office and persons seeking such office will be voted for wholly within one county. Consequently, such persons should file their declarations in the office of the county clerk in their respective counties in compliance with Section 11553, R. S. Mo. 1939.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RFT:CP