

COUNTY COURTS: Who may call a meeting of the County Court during adjourned term.

November 30, 1939

12-5



Hon. Jack H. Denny  
Prosecuting Attorney  
Howard County  
Fayette, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion under date of November 28, 1939, which reads as follows:

"The Howard County Court wishes your opinion as to who can call the court together for a special meeting. The custom here is to adjourn from time to time. Once in a while they wish to meet in between adjournments. They wish to know whether only the presiding judge can call the meeting, whether one other judge can call the meeting, or whether two beside the presiding judge can call the meeting. For example: the court meets on the first Monday in December and adjourns to the third Monday in December. On the second Monday one of the judges decides that it is necessary for the court to meet. Can he require the court to meet, can two of the judges require the court to meet, and can the presiding judge require the meeting?"

Section 2087 R. S. Missouri, 1929, provides the county court may hold adjourned terms of court, and reads as follows:

"Each county court may hold adjourned terms whenever it may become necessary for the transaction of its business."

Section 2083 R. S. Missouri, 1929, provides for four (4) terms of court, and reads as follows:

"Four terms of the county court shall be held in each county annually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such manner as to them shall seem expedient: Provided, that in counties now containing or that may hereafter contain seventy-five thousand or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat, the terms of said court shall be held monthly and alternately at the county seat and such other place as may be provided for the holding of such court, and each monthly term shall commence on the first Monday in each month."

Under Section 2085 R. S. Missouri, 1929, either the president or any two judges of the County Court may hold a special term of court whenever the business of the county requires it, and reads as follows:

"The president or any two judges of the county court may order a special term whenever the business and interest of the county may require it."

In State ex rel. v. Mitchell, 127 Mo. App. 455, 1. c. 458, 459, 460 and 461, the facts were disclosed that during the regular May term of court which had not adjourned finally, but was in recess and had adjourned to June 3rd. That on May 30, 1907, the president of the County Court ordered a special term of court to consider a petition filed on May 20th for a dramshop license. The Court held that under Section 1785 R. S. Missouri, 1899, which is now Section 2085, supra, the president or any two members of the County Court may call a special term of court when the business or interest of the county demands same. This may be done during a regular term of court, even when said court is not actually in session but during an adjourned term of court. The Court, in so holding, said:

"From the facts stated, it appears clearly that although the regular May Term was not finally adjourned, the court was not in session at the time the petition was filed, nor was it in session at any time after the filing of the petition until it convened in special term. The special term being ordered and held during a recess of the regular term, it certainly did not and could not conflict with the regular term. As a matter of fact, it was then in a state of recess or suspension for the time being. There is a doctrine in our law to the effect that during a term of court, and until the term has finally adjourned, it is, in legal contemplation, but a single day. (Gormley.v.

Transit Co., 126 Mo. App. 405, 103 S. W. 1147; Becker v. Schutte, 85 Mo. App. 57; Williams v. Walton, 84 Mo. App. 433; State v. Jeffors, 64 Mo. 376.) It is upon this doctrine the argument proceeds to the effect that it is inconsistent to hold a special term of the court during a time, when, in legal contemplation, the regular term is still in existence. Now, whatever merit this argument might have in the broad field of general law, it is certainly not persuasive here under the several provisions of our statute. Section 1783, Revised Statutes 1899, so far as pertinent here, provides that four terms of the county court shall be held in each county annually, commencing on the first Monday of February, May August and November. Section 1787 provides for adjourned terms whenever it may become necessary for the transaction of the county business, and these adjourned terms are of course continuations and parcel of the regular term. (Trammel v. Railway, 101 Mo. 136, 13 S. W. 505.) Section 1785 provides: 'The president or any two judges of the county court may order a special term whenever the business and interest of the county may require it.' Section 1786 provides for notice of such term. It clearly appears from these several statutory provisions, the Legislature intended to authorize a term of the county court of some character, either regular, adjourned or special, as expressed in the statutes, 'whenever' the business or interests of the county seem to require it. Now it is and has long been the custom and usage of these courts in many of the counties of the state at least, to meet the first Monday in every month of the year; that is to say, to adjourn the May term to the first Monday in

June, and in June to adjourn to the first Monday in July; and so with each succeeding term, preparatory to disposing of such matters as may properly come before the court. The Legislature certainly manifested its concern in this connection by specially providing for adjourned terms when in truth and in fact, the power to adjourn from time to time and to hold adjourned terms were inherent in the court without the aid and wholly irrespective of the statute. (Higgins v. Ransdall, 13 Mo. 205-208.) However that may be, the section manifests the concern of the Legislature in providing for frequent and convenient terms of court, to the end that the business in which the county is interested, be not neglected. It is obvious the Legislature was impelled by the same motive in providing for special terms of court, as above indicated. Having specially provided for and authorized frequent adjourned terms, it is quite certain the Legislature had such adjourned terms in contemplation when it enacted the section authorizing the special terms referred to. Now this being true, it certainly contemplated and intended that such special terms be held not only after final adjournment of the regular term, but at intervals during its recess as well. It is manifest from all of the provisions, when read together, the Legislature intended to authorize a term of the county court at any time when the regular or adjourned term was not actually in session, and it was necessary within the language and spirit of the statute. This, it appears, is indicated by the broad language employed in the sections authorizing both the special and adjourned terms, for it is

there said, such terms may be held 'whenever' etc., etc. Nothing is said in the section limiting special terms to a time after the regular or adjourned term is finally adjourned to court in course. Now suppose that instead of the matter of a dramshop license, there was involved in this case a question arising out of a great catastrophe or fire. Say, on May 17th, the county court adjourned until June 3rd, and during this interval, the courthouse or the county infirmary or poorhouse should be destroyed by earthquake or consumed by fire. Would any one attempt to argue that a special term of the county court could not be lawfully held under this statute during the interval mentioned to deal with this situation of affairs by providing a proper place for the county records and offices or proper quarters for the county poor and infirm? We are persuaded that no one would argue a special term could not be holden during the recess of the regular term for the reason the regular term had not yet finally adjourned and was therefore in legal contemplation, still in session. It is clear the Legislature intended to authorize special terms of the county court under the circumstances presented in this case. In *State v. Riddle*, 179 Mo. 287-299, 78 S. W. 606, our Supreme Court considered a question which arose on a state of facts where a special term of the circuit court had been holden during the recess of a regular term of the same court, and before its final adjournment, precisely as in this case, and no mention was made of the question here pressed upon the court. It was there said that such special terms are entirely in-



dependent and are in no manner connected with the regular term of such courts. Indeed, it seems that the salutary provisions of these statutes authorizing special terms would almost entirely fail were the courts to adjudge that no special terms could be held during the interval or recess while the regular terms may not yet be finally adjourned."

Also, in *State v. Fulton*, 152 Mo. App. 345, l. c. 349 and 350, the court held that Section 4088, Statutes of 1909, which is the same as Section 2085, supra, was enacted for the purpose of providing a means by which the court can be convened at times other than a regular or adjourned term, and when convened it may transact any business. In so holding, the court said:

"The record, however, in this case is not entirely silent, but it recites that the county court met pursuant to a call by the presiding judge. The presiding judge is authorized by statute to call a special term of the court. Statute 1909, section 4088, and if the court convened pursuant to his call it was legally convened, unless he had failed to give the notice required by the statute. (Section 4088) Whether he had given such notice was a question of fact and if the court proceeded to act it will be presumed that it was first determined that the proper notice had been given. (*State v. Baty and Hadley v. Bernero*, supra.)

"The statute authorizing the calling of a special term of a county court is as follows:

'Section 4088. The president, or any two judges, of the county court may order a special term whenever

the business and interests of the county may require it.'

"It is contended by appellant that the casting up of the vote in a local option election and ordering the publication of notice thereof is not business of the county, and the county as such was not interested therein, and hence, the presiding judge could not call a special term of the county court for the purpose of transacting this business.

"The statute nowhere requires that in calling a special term the particular purpose for which it is called shall be designated, nor is the power of the court to act restricted to the matters which may have induced the call. The provision for a special term is for the purpose of providing a means by which the court can be convened at times other than a regular or adjourned term, and when convened, it may transact any business that may be legally brought before it. Further, the power to determine when a special term is necessary is left exclusively to the judge or judges who are authorized by law to call the term and their discretion in making the call cannot be questioned."

Therefore, it is the opinion of this Department that either the president or two members of the county court may call a special session to transact business whenever the business or interest of the county demands same. This may even be done during an adjourned term of the court.

Respectfully submitted,

APPROVED:

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