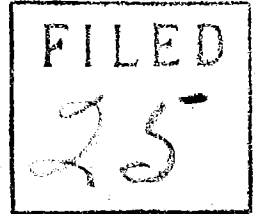


**MAGISTRATES:** Magistrates may not have any connection with a law suit even though it was filed prior to assuming office.



November 25, 1946

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Mr. A. R. Dunn  
Attorney at Law  
Rice Building  
Neosho, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion dated November 9, 1946, which reads as follows:

"At the recent election I was elected Probate Judge and Magistrate of Newton County, and, as you know, I will not be permitted to continue the practice of law.

"I have a great many cases filed which will not come up for hearing until after the first of the year, and the question has been raised as to whether I will be permitted to wind up that unfinished business after assuming the duties of Magistrate-Probate Judge."

Section 24, Article V of the Constitution of Missouri 1945, provides in part as follows:

" \* \* \* \* \* No judge or magistrate shall \* \* \* \* \* practice law or do law business, \* \* \* \* \*"

Section 3 of Senate Bill 207, passed by the 63rd General Assembly, provides in part as follows:

"No magistrate shall \* \* \* \* \* practice law or do law business while he is magistrate."

The general rule as to the meaning of negative words in a statute is given in 59 C. J. 1075 as follows:

"It is a general rule that a statute which is negative or prohibitory, although it provides no penalty for noncompliance, or which contains exclusive terms, shows a legislative

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intent to make the provision mandatory, and it has been said that negative words in a grant of power are never construed as directory;  
\* \* \* \* \*

Therefore, we believe it is apparent from a reading of the constitutional statutory provision that a magistrate, after he assumes the duties of the office is absolutely forbidden to practice law or do law business of any kind whatsoever.

The question of whether you will be permitted to represent clients in cases which have been filed before you assumed the duties of magistrate, but which will not be heard in court until after you have assumed such duties, depends upon whether such activities on your part, after you have assumed the office of magistrate, constitutes practicing law or doing law business.

Section 13313 R. S. Mo. 1939, provides as follows:

"The 'practice of the law' is hereby defined to be and is the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies. The 'law business' is hereby defined to be and is the advising or counseling for a valuable consideration of any person, firm, association, or corporation as to any secular law or the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights or the doing of any act for a valuable consideration in a representative capacity, obtaining or tending to obtain or securing or tending to secure for any person, firm, association or corporation any property or property rights whatsoever."

The practice was defined in Clark v. Austin, 340 Mo. 477, 101 S. W. (2d) 977 as follows (the paragraphing is ours) l. c. 954:

"It would be difficult to give an all-inclusive definition of the practice of law, and we will not attempt to do so. It will be sufficient for present purposes to say that one is engaged in the practice of law when he, for a valuable consideration, engages in the business of advising persons, firms, associations, or corporations as to their rights under the law,

or, appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, board, body committee, or commission constituted by the law or authorized to settle controversies, and there, in such representative capacity, performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law.

Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged, performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law."

State ex rel. McKittrick v. C. S. Dudley & Co., 340 Mo. 852, 102 S. W. (2d) 895, declares both definitions are practically the same while the differentiation made in Liberty Mutual Insurance Company v. Jones 344 Mo. 932, 130 S. W. (2d) 945, has no relation to the facts presented in the instant case.

Under the above definitions it would appear that your connection with a law suit, whether by appearance in court or in an advisory capacity, would constitute the practice of law and/or the doing of law business which a magistrate is forbidden to do by the constitution and statutes.

Mr. A. R. Dunn

November 25, 1946

CONCLUSION

It is therefore the opinion of this department that a magistrate after he assumes the duties of his office may not have any connection with a case which has been filed by him before he assumed the duties of magistrate.

Yours very truly

ARTHUR M. O'KEEFE  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

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