COURT JUDGES: 1) Associate Judge must be a resident of district in order to qualify; voluntary departure from district works a forfeiture of office.
2) Sections 2475 and 1988, R.S.Mo. 1939 construed.

January 27, 1944

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FILED
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Honorable J. R. Eiser
Prosecuting Attorney
Holt County
Oregon, Missouri

Dear Mr. Eiser:

We are in receipt of your request for an opinion from this Department, under date of November 29, 1943, which request reads as follows:

> "At your early convenience, I would appreciate your opinion on the following question, to-wit:
>
> "One of our County Judges who represents the First or south District in the county is a resident of said district, but has purchased a farm in the Second or North District of the county and proposes to move to said farm in the near future. I would like to know if a change of residence from the District in which said County Judge now resides and represents, to the district which he does not represent will disqualify him to hold said office of County Judge representing the First or South District.
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> "Thank you for your courtesy in this matter."

In order to answer the question presented in your opinion request we think it advisable to first set forth the pertinent statutes, together with some observations that must be made to the end that we may arrive at the correct interpretation of the Law. First, we quote Section 1988, which is contained in Article 1, Chapter 10, R. S. Mo. 1939, which Article is entitled "General Powers and Duties" and Chapter 10 of the Statutes, supra, has to do with "Courts of Records". Said Section reads as follows:

> "Qualifications of Judges.
> Every judge of the supreme court and of the several courts of appeals shall be a citizen of the United States, not less than thirty years old, and shall have been a citizen of this state five years next preceding his election or appointment, and shall be learned in the law. Every judge of the circuit court shall be not less than thirty years of age, shall have been a citizen of the United States for five years, a qualified voter of this state for three years next before his election or appointment, and shall be learned in the law. Every judge of probate and of a county court shall have attained the age of twenty-four years, and shall have been a citizen of the United States five years and shall have been a resident of the county in which he may be elected for one year next preceding his election; and every judge of any court of record shall be commissioned by the governor, and, whether elected or appointed, shall hold his office until his successor is elected and qualified."

In tracing the history of this section we find that it first appears in the Revised Statutes of Missouri in the year 1825 at page 268, paragraph 2, and contains the same wording as the now present section with the exception that in 1909 the Legislature amended what was then Section 1578, Revised Statutes of 1899, (see the Laws of 1909, page 391) and added at the end of the section the words:

> "* * *'and, whether elected or appointed, shall hold his office until his successor is elected and qualified.' "

and substituted in the first line of the text the word "several" for the words " St. Louis and Kansas City". This section as it now stands in the statutes sets up the qualifications of judges and if no other statute or specific wording can be found in the statutes to take precedence over this section through statutory construction, then we would be driven to the immediate conclusion that the County Judge referred to in your opinion request if he had attained the age of twenty-four years, was a citizen of the United States five years preceding his election or appointment to the office of county judge, and was a resident of the county in which he was elected or appointed for one year next preceding his election (or appointment), then the fact that he moved out of the particular district would not

disqualify him for your opinion request presupposes that he would remain a resident of the county, and therefore, did meet the qualifications as set up in this section even though he was not living in the geographical area containing the voters who by casting their votes, elected him to the office. Having thus set forth our views as pertain to this section, we next wish to call attention to Section 2474 and Section 2475, R. S. Mo. 1939, wherein we particularly noted that two sections are contained in Article 13 of Chapter 10, which article is entitled "County Courts." Section 2474 reads as follows:

> "The county court shall be composed of three members, to be styled judges of the county court, of whom the probate judge may be one, and each county shall be districted by the county court thereof into two districts, of contiguous territory, as near equal in population as practicalbe, without dividing municipal townships."

We wish to point out that this section was passed in its present form in 1877 (see Laws of 1877, Section 1, page 226). We shall not dwell upon this section for mere reference to it we feel is sufficient and there is no question raised about power of the Court to district the County. We next quote Section 2475, as it now appears in the Revised Statutes of Mo. 1939:

> "At the general election in the year eighteen hundred and eighty, and every two years thereafter, the qualified voters of each of said districts shall elect a county court judge, who shall hold his office for a term of two years and until his successor is duly elected and qualified; and at the general election in the year eighteen hundred and eighty-two, and every four years thereafter, the presiding judge of said court shall be elected by the qualified voters of the county at large, who shall hold his office for the term of four years and until his successor is duly elected and qualified. Each judge elected under the provisions of this article shall enter upon the duties of his office on the first day of January next after his election."

Upon a study of the history of the last section supra, we find that it was enacted by the Legislature in 1877, (see Section 2, Laws of Missouri 1877, page 226) and we here

again quote the section as it was enacted:

> "At the general election in the year 1878, and every two years thereafter, the qualified electors of each of said districts shall elect and be entitled to one of the judges of the county court, who shall hold their offices for the term of two years, and until their successors are duly elected and qualified, and at said election, and every four years thereafter, the other judge of said court shall be elected by the qualified electors of the county at large, who shall be president of the court, and shall hold his office for the term of four years and until his successor is duly elected and qualified; Provided, That the judges of the county court, elected under the provisions of this chapter, shall enter upon the discharge of their duties on the first day of January next after they shall have been elected and qualified according to law."

It will be noted that we have underlined certain words in the above quoted section, and on comparison with Section 2475 as it now appears in the Revised Statutes of Mo. 1939, that said section does not contain the underlined words. We find that these words were deleted in the Revised Statutes of 1879 (see Section 1194 R. S. Mo. 1879), and it will be noted that the wording as it appears in that statute has prevailed to the present time, or for a period of sixty-five years. Now we must conclude that unless Section 2 of the Laws of 1877 as we have underlined, were deleted by Legislative action in the form of an amendment or otherwise, then those words are still as much a part of the Section 2475 R. S. Mo. 1939, as they were the day that Section 2, Laws of 1877 became effective as the Law. Bowen vs. The Mo. Pac. R'y. Co. 118 Mo. 541, l.c. 548:

> "* * *The statute rolls in the office of the secretary of state are the primary and best evidence; and, as it appears from an examination of them that the two sections in question were not re-enacted, there is nothing left for us to do but declare them invalid, void."

We have endeavored to make an investigation to determine by what authority, if any, the words that were contained in Section 2, Laws of Missouri 1877, page 226, supra, were deleted from Section 1194 R. S. Missouri 1879, when it will be noted

that at the bottom of Section 1194, Supra, there is contained in parenthesis "Laws 1877, p. 226, Section 2, amended". Upon review of the original roll in the Secretary of State's office we were unable to find any legislative action showing a repeal or an amendment of Section 2, supra. However, on reading the preface of the Revised Statutes of Missouri, Volume 1 for the year 1879 in which volume is contained Section 1194, supra, we find this wording:

> "Under this system, all of the more important subjects in the statutes and session acts were carefully revised and reported, and passed as other bills in the course of ordinary legislation. But as this mode of revision was necessarily tedious and expensive, by reason of the large amount of printing it imposed, those acts which, in the judgment of the General Assembly, required no changes or amendments were left undisturbed."

We take it from this wording that possibly the Legislative Committee re-worded Section 2, Laws of Missouri 1877 when they were preparing the Revised Statutes of 1879 in Revision Session, so that it read as is contained in Section 1194, R. S. 1879. If these words were deleted with the intention of taking from the section the meaning that they would give to the section as they were contained therein, then we would be bound to reach a different conclusion than if on the other hand the Legislative Committee took the view that the words were superfluous. We are inclined to this latter view for reasons hereinafter set forth, and for the additional reason that the Legislative Committee no doubt were prompted in the first instance to change this section because Section 2 started out "at the general election of 1878 and every two years thereafter * * *" and in order to modernize the section in the revision they started the section " at the general election in the year of 1880 and every two years thereafter* * *" and in the body of the section which had to do with the judge elected at large, they inserted the wording "* * *and at the general election in the year of 1882 and every four years thereafter* * *". Of course, bearing in mind that the Revision Session was in 1879, and we do not believe that there was any deliberate intention to anywise interfere with those county judges who were then holding office as county judge in the several counties in the State of Missouri at that time. We have been unable to find any case in Missouri wherein the Court has passed upon this section. Therefore, we have no guide

except the general rules of statutory construction which we hereinafter set forth in stating our position in determining what is the meaning of Section 2475 R. S. Mo. 1939, which is the same as Section 1194, R. S. Mo. 1879.

A further question immediately springs forth and that is if the Revisionary Committee purposely deleted the words "and be entitled to one of the judges of the county court" then did they intend that the section as they wrote it should mean that "the qualified voters of each of said districts shall elect a county judge" (section 2475) but said district should not be entitled to one of the judges? Or, did they mean that said district should not necessarily be entitled to one of the judges? We do not adhere to the interpretation that any such intention was in the minds of the Revisionary Committee for we believe that such an interpretation would defeat the purpose of the intention of the act for it is said in the case of State v. Miller, 318 Mo. 581; 300 S. W. Page 765, l.c. 767:

> "* * *We cannot assume that the lawmakers intended to give the word a meaning which would defeat the purpose of the act.* * *"

We wish to further call attention to the case of State ex rel. Ernest E. Smith vs. Thomas, 220 S. W. 702; 203 Mo. App. 452, l.c. 457, wherein the court said:

> "* * *In this situation it is proper to ascertain the intention of the Legislature which framed the statute. (Sedgwick on Construction of Statutory and Constitutional Law (2 Ed.), p. 194; State ex rel. v. Little River District, 271 Mo. 429, 436,) where it is said, 'It is elementary that statutes should be so reasonably construed as to give them their intended force and effect;' Gum v. St. L. & S. F. Ry. Co., 198 S. W. , 494, 496, where it is said, 'In the interpretation of an amended statute, the state of the old law and mischiefs arising thereunder are to be considered.)"

And again in the case of Wallace vs. Woods, 102 S. W. (2d) page 91, l.c. 95, paragraph 9-11 the court said:

> " ' The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to

> promote its object, and "the manifest purpose of the statute, considered historically," is properly given consideration.* * * 2 Lewis, Sutherland on Stat. Const. (2d Ed.) section 363; Endlich on Interpretation of Statutes, Section 329; and Maxwell on Statutes (5th Ed.) 425.' "

therefore, upon the rules laid down in the cases, supra, together with the historical setting of Section 2475 and in view of the fact that the section would be susceptible of a nullifying interpretation if the deleted words were disregarded and a converse effect given, because of the fact that they were deleted, it is our view that the deleted words "and be entitled to one of the judges of the county court" was because of an oversight on the part of the Revisionary Committee or because they were deemed superfluous by the Committee.

We wish to further point out that down through the years since 1877, the general practice has been adhered to that the judge elected by one of the several districts of the county designated through the authority imposed in Section 2474, has been a resident of the geographical area from which he is elected, and we note from your opinion request that this condition was fully met by the judge who is now contemplating moving out of the geographical area. It is our view that Section 2475 as it now reads, makes it incumbent upon the person elected from the geographical area to be a resident of that area as a condition precedent before he could qualify as a county judge to represent that district. We reason this not only from the wording of Section 2475, or from the history of the section, but from the further fact that at the same time he is elected, the other district is also electing a person who shall represent his particular district, and the voters of each district at the election vote with the purpose in mind to place on the county court bench, a person who will represent the district from which he is elected. We shall not dwell on the remoteness and the urgent need for a first hand understanding of the conditions of each particular land owner in the county in the year 1877 and subsequent years, but one is not so far removed at the present time not to realize that if the interpretation and the meaning of the wording of the section 2475 was to be different, in that two persons could legally be elected to the county court bench from the same geographical area, and for example, each from the extreme end of the county, how little representation would have been enjoyed by those persons living in the opposite extremities of the county in the other geographical area. So Section 2475 in our

opinion, can have but one meaning namely; that an urgent need existed in 1877 as it does at the present time; that first hand information is necessary as to the needs of the geographical area as pertains to their roads, bridges and other multiplicity of needs of the citizenry of the geographical area which could only be equally enjoyed unless a county was divided into districts as is provided in Section 2474, giving each district representation with a further precaution that a third person should be elected at large or by the combined votes of an electorate of the whole county. We think our position thus stated is sustained by the case of Straughan vs. Meyers, 268 Mo. 580, l.c. 591:

> "* ** In construing statutory provisions the object and purpose which induce their enactment and the mischief they are intended to prevent must be given effect (Spitler v. Young, 63 Mo. 42), as must also the results and consequences of a proposed interpretation. (Glaser v. Rothschild, 221 Mo. l.c. 210)"

Of course the purpose of the judge elected at large was to provide a balancer or stabilizer on the county court. This is borne out through the fact that he serves for a term of four years whereas the associate judge serves only for a term of two years, and further, because of the fact that he is elected at a different time, or two years after they are elected and has the duty of presiding over the body.

Thus, we determine that Section 2475 is a section setting up the manner of election of the county judges and further guaranteeing to the citizenry of a particular county a form of representation, whereas as we pointed out in the first part of this opinion, Section 1988, supra, is a general section solely for the purpose of stating the conditions that shall be met by a person who seeks to be a judge of one of the Courts of Record. We do not consider that there is any inconsistency because of the fact that Section 2475 requires a person to be a resident of the particular district from which he is elected. Not that provisions can be found in the statutes in so many words, but as we have pointed out, the electorate of a particular district has the right to that type of representation. In other words, as far as a person's qualifications are concerned, he must be a resident of the county whereas the persons of a particular district are entitled to require such person to also meet the further qualification that he must be a resident of their particular district, and such additional qualification does not come because it is set forth in Section 1988, but because of the fact it is our view the wording of Section 2475 fully gives the residents of a particular district this right

and said section is special in character wherein it requires that a judge elected from one of the districts shall be a resident of said district. In this connection we wish to call attention to a general rule of statutory construction which may be found in the case of State ex rel. Equality Sav. & Bldg. Ass'n. v. Brown, 68 S. W. (2d) 55, l. c. 59; 334 Mo. 781, which reads as follows:

> "* * *'where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication.' (Numerous cases cited.) If there be any repugnancy between these two statutes, the general statute, section 4566, must yield to the special statute, section 5613."

Having thus set forth our views we must conclude that if a person, as is designated in your opinion request who was duly elected and qualified from a particular district in accordance with the text of Section 2475, as the person referred to in your opinion request no doubt did, then it is our view that when such person voluntarily leaves the confines of the geographical area of his district the residents of that particular district lose the representation which is guaranteed to them by Section 2475, putting them in a position where they may have grounds to have a legal forfeiture declared of the office of the judge representing their respective district. We say this not withstanding the fact that such person may still be a resident of the county in compliance with Section 1988, but wish to make this clear that that section sets forth the general qualifications of a person who seeks to be Judge of a Court of Record, whereas Section 2475 is special in character, guaranteeing unto the residents of the particular district the right of representation from their particular district.

For further authority to sustain our position we quote from the following authority:

In the case of Barre v. Greenwich (1822) 1 Pick. (Mass.) 129, the court said:

> "* * *Besides, it must be conceded, as a general principle, that where the legislature has provided that certain offices
>
> shall exist in any particular community, the members of that community are alone eligible to those offices; they are in fact the representatives of that community, in that department of municipal government which they are appointed to discharge. That community alone are judges of the qualifications of such officer, and can alone command his services. It would seem to follow that when he ceases to be a member of the community, he ceases to be its officer.'"

This involved the question whether the removal of a town constable and tax collector to another town in the state had the effect of forfeiting his office.

> "IT was admitted by all parties in State ex rel. Malloy v. Skirving (1886) 19 Neb. 497, 27, N. W. 723, that a statute providing for a board of county commissioners consisting of three persons having the qualifications of electors, who should be 'elected in their respective districts,' and that ' one commissioner shall be elected from each of said districts by the qualified voters of the whole county,' required that a person elected county commissioner be a resident of the district at the time of his election; proceeding upon which assumption, it was held by the court that the removal of a commissioner from his district after his election had the effect of vacating his office, under a statute providing that any civil office should be vacant upon the holder's ceasing to be a resident of the state, district, county, township, precinct, or ward in which the duties of his office were to be exercised or for which he was elected."
>
> "Attention is called to State ex rel. Johnston v. Donworth (1907) 127 Mo. App. 377, 105 S. W. 1055, involving the effect of the removal of an

alderman from the ward for which he was elected after his election and qualification, under a statute providing that no person should be an alderman unless he was a resident of the ward from which he was elected, in which the court said: 'Defendant's counsel say that the statute is ambiguous. Conceding for argument's sake that it is, it ought to be interpreted in the light of the legislative policy, if that can be ascertained; that is to say, we ought to attempt to realize the purpose of the legislature. We conceive that this purpose and policy is to establish ward representation in the boards of aldermen of cities of the fourth class; each ward of such city to be represented by two residents familiar with the needs of the ward and whose interests are identical with the interests of the ward community . . . . It is true that the aldermen act for the welfare of the city generally and pass ordinances which relate to the entire city; but it is also true that they represent in an especial manner their particular wards.' "

"In People v. Ballhorn (1902) 100 Ill. App. 571, in which the statute expressly required that an alderman should reside within the ward for which he was elected, the court stated: 'Sound public policy requires that those who represent the local units of government shall themselves be component parts of such units. The purpose of these statutes is to effectuate this wise policy. And this purpose can only be truly served by requiring such representatives to be and remain actual residents of the units which they represent, in contradistinction from constructive residents.' "

(The aforementioned cases were taken from 120 A.L.R., page 669, and other cases may be found in said citation.)

CONCLUSION.

1) It is the opinion of this Department that Section 2475 R. S. Mo. 1939 guarantees unto the residents of the geographical area set up under Section 2474 for the election

of an Associate County Judge, the right to have the Associate Judge be a resident of the district from which they elect him, and if such judge after being duly elected and qualified under Section 2475, voluntarily leaves said district, the citizens of said district thereby lose the right to representation, as is guaranteed by Section 2475, supra.

2) It is the opinion of this Department that Section 1988, R. S. Mo. 1939, which sets forth the general qualifications of a person who seeks to be judge of a Court of Record, that said section applies to such person solely and does not take precedence over a special section which guarantees rights to the citizens of a geographical area, even though such section in truth and fact places an additional qualification upon such person holding judgeship.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

ROY McKITTRICK
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