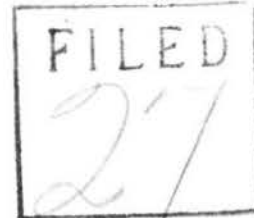


COUNTY COURT: County Court has power and authority to redistrict county into two districts for County Court Judicial Districts.

November 23, 1937.

Honorable Edw. T. Eversole
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

11-26



Dear Sir:

This is to acknowledge receipt of your letter of November 19th requesting the opinion of this Department, which letter is as follows:

"Your opinion is respectfully requested concerning the power and legality of a proposed plan to re-divide Jefferson County into County Court Districts. The re-dividing is to be done by Order of the County Court of Jefferson County, for the purpose of making more nearly equal, the population of the two Districts, than they are at present.

"Section 2072, R. S. Mo. 1929, provides for the County Court dividing the County into two Districts as nearly equal in population as possible, without dividing municipal townships. The original division of the County into the two present districts undoubtedly was as fair division as could be made at the time, however, since the original division, some parts of the County have increased in population materially while others have stood still or increased very little.

"The vote in the County the last election indicates beyond any question that the population of the Southern District which includes Desoto, Festus, Crystal City and Herculaneum has approximately twice

the population, as that of the Northern District. It would be impossible to re-divide the County so that the population in each district would be exactly the same, without dividing the Municipal Townships, however, a division could be made as proposed which would make the two districts much more nearly equal than they are at present, in population."

Your question is whether the county court after a county has established its two (judicial) districts, as provided in Section 2072, R. S. Mo. 1929, may change or alter said districts?

Article VI, Section 36, Missouri Constitution, provides:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Section 2072, R. S. Mo., 1929, provides:

"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 practicable, without dividing municipal townships."

The power to establish the county court districts has been delegated by the legislative branch of the State to the county courts of the various counties.

Section 2073, R. S. Mo. 1929, provides for the election of a county judge from each district of the county

for two years and a presiding judge from the county at large to serve four years. Each district thereby has a judge on the county court. Does this Section (2072, supra) mean that if a county has been districted once by the county court that it cannot thereafter be altered or changed? We do not think so.

We are unable to find in the appellate courts of Missouri a case where this question has been decided. In 15 Corpus Juris, page 415, Section 42, it is said:

"The Legislature has power, when not limited or restricted by constitutional provisions, to alter, to abolish or to change such precincts at will, and this power may be, and sometimes is, delegated to county boards. * * * * Where the power and duty to create or to change precincts or districts are delegated to county authorities, they must make the change or division in a reasonably fair and just manner, with due regard to the convenience of the people, and must comply with statutory requirements; but a substantial compliance is sufficient."

In State ex rel. Connelly v. Haverly, 87 N. W. 959 (Neb.), it is held that under the statute the county commissioners had the right to alter the boundary lines of the different commissioners' districts of a county for the purpose of adjusting such districts to changing population.

Also, in Hayes v. Rogers, 24 Kans. 145, it was said:

"Full power of rearranging the county in commissioners' districts is given, with the limitations that they shall be compact districts, and as equal in population as possible. In the very nature of things, the changes of population in some of our new and growing counties would require very radical changes of territory in order to make the districts equal in population."

Can it be said that once a county has been districted by a county court, it is fixed and settled for all time to come? The pertinent part of Section 2072, supra, says:

"* * * and each county shall be districted by the county court thereof into two districts, of contiguous territory, as near equal in population as practicable, without dividing municipal townships."

We can imagine a situation where at the time a county was established the county court exercised its prerogative and divided the county into two districts, in accordance with the above section, "of contiguous territory, as near equal in population as practicable, without dividing municipal townships." The districts at the time of their creation may be equal in population but as time goes on one district by the rapid changes in population may have three or four times as many inhabitants as the other district. The very purpose of this section is that the two districts be as near equal in population as practicable so that the people of one district shall have the same representation, according to population, on the county court as the other district. The section does not say that the county shall be divided equally territorially, but equally according to population.

It is, therefore, our opinion that the county court of your county, exercising the discretion which has been lodged in it, has the power and authority to redistrict the county for the purpose of more equitably adjusting the districts, so as to conform to changes in population of the county since the formation of the two districts now existing.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General