

PROBATION OFFICER: Section 9708, R. S. Mo. 1939, repealed by
implication.

October 12, 1943

10/16



Honorable Roth H. Faubion
Prosecuting Attorney
Lamar, Missouri

Dear Mr. Faubion:

The Attorney-General acknowledges receipt of your letter of October 8, 1943, in which you request an opinion as follows:

"I have been studying sections 9708, 29718, 9718 inclusive. Also sections 9719 and 29732 inclusive of the revised statutes of Missouri 1939, concerning the appointments and salaries of probation officers, and of superintendents of public welfare.

"The cases cited seem to be in variance with each other as to whether section 9719 etc., repeals section 9708 entirely or to a limited degree only, or if at all. I wish an opinion on that question.

"In addition to the above information I would like an opinion as to whether the circuit court must, or may approve the appointment of a superintendent of public welfare under section 9719. It appears plainly that section 9720 precludes anyone but the county court in fixing the salaries of the county superintendent of public welfare."

What is published in the Revised Statutes of Missouri for 1939, as Section 9708, Article 10, Chapter 56, was published

as Section 14171, R. S. Mo. 1929, and this section had been Section 1144, R. S. Mo. 1919. The section was carried in the 1929 and 1939 revisions without change or amendment from the form in which it was carried in the 1919 revision.

In 1922 the Supreme Court of Missouri, en banc, all judges concurring, in the case of Poindexter v. Pettis County, 246 S. W. 38, l. c. 40, held Section 1144, R. S. Mo. 1919, to have been repealed by Section 1 of Senate Bill 153, enacted by the Fifty-first General Assembly and published in Laws of Missouri, 1921, at page 586. In holding Section 1144, R. S. Mo. 1919 to have been repealed, the court used the following language:

"And under the decisions of this state, as was held in the case of State v. Roller, 77 Mo. 120, that--

"'A statute revising the whole subject-matter of a former statute and evidently intended as a substitute for it, although it contains no express words to that effect, repeals the former.'

"The following cases also decide the same point: State v. Patterson, 207 Mo. 129, loc. cit. 145, 105 S. W. 1048; Yall v. Gillham, 187 Mo. 393, loc. cit. 405, 88 S. W. 125; Delaney v. Police Court, 167 Mo. 667, loc. cit. 616, 67 S. W. 589; Meriwether v. Love, 167 Mo. 514, loc. cit. 521, 67 S. W. 250; Kern v. Legion of Honor, 167 Mo. 471, loc. cit. 484, 67 S. W. 252; State v. Summers, 142 Mo. 586, loc. cit. 591, 44 S. W. 797.

"Under the rulings announced in these cases, unquestionably it was the intention of the Legislature by the act of 1921 to repeal section 1144, R. S. 1919."

Section 1 of Senate Bill 153, enacted by the Fifty-first General Assembly, was printed in the 1929 revision of

Oct. 12, 1943

the statutes as Section 14182 and is now Section 9719,
Article 11, Chapter 56, R. S. Mo. 1939.

Conclusion.

Following the decision in the Poindexter case, supra,
it is the opinion of the writer that what is published as
Section 9708, Article 10, Chapter 56, R. S. Mo. 1939, was re-
pealed more than twenty years ago and has had no effect since
the Poindexter decision.

The circuit court is given no power to approve the
appointment of a superintendent of public welfare provided for
by Section 9719, R. S. Mo. 1939.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

VOJ:EG