CONSTITUTION OF 1945; Authority of judges of circuit courts
Magistrate Courts: to establish additional magistrate courts
in counties of 30,000 inhabitants or less.

April 8, 1946

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Honorable Raymond L. Falzone
Prosecuting Attorney
Randolph County
Moberly, Missouri

Dear Sir:

Reference is made to your request of recent date for an official opinion of this office, reading as follows:

> "Article V, Section 18, of the new Constitution apparently provides that in counties of 30,000 inhabitants or less the Circuit Court has the right to increase the number of Magistrates.
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> "Yet the new Magistrates law passed by the Legislature fails to provide any procedure for such increase. In other words, the Constitution provides that the number of Magistrates may be increased in any county, while the Legislature's bill says that the number may be increased in any county of 30,000 or more.
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> "What our Justices of the Peace desire to know and would like to have your opinion on is whether they have the right to petition the Circuit Court for the establishment of another Magistrate Court or two in Randolph County and whether the Court has the right to establish such additional court or courts. My own personal opinion is that they do have such right."

Article V, Section 18, of the Constitution of 1945, referred to in your letter of inquiry, reads as follows:

> "There shall be a magistrate court in each county. In counties of 30,000 inhabitants or less, the probate judge shall be judge of the magistrate court. In counties of more than 30,000 and not more than 70,000 inhabitants, there shall be one magistrate. In counties of more than 70,000 and less than 100,000 inhabitants there shall be two magistrates. In counties of 100,000 inhabitants or more there shall be two magistrates, and one additional magistrate for each additional 100,000 inhabitants, or major fraction thereof. According to the needs of justice the foregoing number of magistrates in any county may be increased by not more than two, or such increased number may be decreased, by order of the circuit court on petition, and after hearing on not less than thirty days public notice. The salaries of magistrates shall be paid from the source or sources prescribed by law." (Emphasis ours.)

It is a primary rule of construction that the intent and purpose of a particular provision is to be ascertained and that such intent and purpose is of primary importance in determining the meaning and scope thereof. We quote from Graves v. Purcell, 85 S.W. (2d) 543, 337 Mo. 574:

> "In determining the true meaning and scope of constitutional provisions, the intent and purpose of the lawmakers is of primary importance."

In arriving at such construction, it is necessary that the fundamental rule be adhered to that the instrument must be construed as a whole. We quote from State v. Adkins, 225 S.W. 981, 284 Mo. 680, l.c. 693:

> "It is a fundamental rule of construction of all writings, whether they be laws, wills, deeds, contracts or constitutions, that they must be construed as a whole, and not in detached fragments; that they must be construed to effectuate and not to destroy their plain

> intent and purpose, and that in determining what is that intent and purpose all provisions relating either generally or specially to a particular topic are to be scrutinized and so interpreted, if possible, as to effectuate the intention of the makers. This rule does not need (though it does not lack) authority to give it vitality. It is inherent in the very nature of things, and springs from reason as Minerva sprang from the brain of Jove, full-grown and ready for battle."

Unless, after resorting to examination of the entire instrument, some ambiguity or uncertainty remains, no resort may be had to matters extrinsic to serve as an aid in construing the provision. We quote from State ex rel. v. Board of Curators of University of Missouri, 188 S. W. 128, 268 Mo. 598, l. c. 610:

> "* * * Its direct force is spent entirely upon an injunction to aid and maintain, under stated conditions, the departments already established. No 'subtlety,' no 'ingenuity of argument,' logically, can wring from the language used any other meaning. In such case we are not permitted, for the purpose of attempting to discover some hidden, some occult intent of the people, to resort to documents other than the Constitution itself. <u>It is only in case the meaning remains in doubt after the whole instrument is examined that the court may turn to extrinsic facts for aid in interpretation. When the words used themselves permit of no doubt as to the meaning, that ends the matter.</u> There is no room for construction." (Emphasis ours.)

Keeping these fundamental rules of construction in mind, we have examined Section 18 of Article V of the Constitution of 1945 and have reached the conclusion that the language incorporated therein relative to the appointment of additional magistrates is such that by its clear meaning the various circuit courts are authorized to create additional magistrate courts in <u>any</u> county, without regard to size. It is, of course, necessary that the creation of such additional magistrate courts is limited to an exercise of the judicial discretion that the needs of justice require their creation, and

further to the limitation that the maximum number so created in any county will be governed by the applicable provisions of Section 18 of Article V with respect to the population of any such county.

Even though it be considered that ambiguity exists in the provisions of Section 18 of Article V of the Constitution of 1945, so that we might be authorized to consider extrinsic matters to determine the true meaning and intent of such provisions, we believe we would reach the same result. In this regard we note that Section 18 of Article V of the Constitution of 1945 superseded Section 37 of Article VI of the Constitution of 1875, which provided for a system of justice of the peace courts in Missouri. That section, together with the implementing statutes enacted thereunder, served the purpose of providing convenient courts of limited jurisdiction easily accessible to litigants. Such courts were of a number "as the public good may require," as was said in the constitutional provision referred to. You will note a somewhat similar provision in the constitutional provision now under consideration, where the language appears as "according to the needs of justice." This, to us, indicates an intent to maintain a similar system of inferior courts.

Further, and as bearing upon the proper construction to be placed upon the constitutional provision, we have resorted to an examination of the debates of the Constitutional Convention. We have done so, well knowing that the general rule is that the reliance that may be placed upon them is somewhat limited. See State ex rel. v. Osburn, 147 S. W. (2d) 1065, l. c. 1068, where, after so declaring the rule as stated, supra, the Supreme Court did in fact consider the constitutional debates referring to the Constitution of 1875 in determining the meaning to be given to certain of its provisions. A similar action was taken by the Supreme Court in the recent case of State ex rel. Montgomery v. Nordberg, which has not yet been reported in either the official reports or the advance sheets.

Keeping this limitation in mind, we direct your attention to a part of the debates found in the Record of the Constitutional Convention of 1944-1945 relating to the constitutional provision now under consideration, particularly at page 2819 of the transcript of the proceedings had:

> "MR. JOPLIN: It does change the number of such courts in counties of less than 30,000 inhabitants?

"MR. PHILLIPS (OF ST. LOUIS CITY): No question of that, Senator.

"MR. COPE: In counties of less than 30,000 inhabitants, how many magistrates courts do you contemplate will be set up under the provisions of this Section?

"MR. PHILLIPS: Counties less than 30,000?

"MR.COPE: Yes.

"MR. PHILLIPS: Well, as I understand it those counties that think that they can have the probate judge continue to act as probate judge and also assume the duties of magistrate can get along with no magistrate. The probate judge can do it all. If, in those counties where they think the probate judge can't do it all, they can have as many as two magistrates and the probate judge.

"MR. COPE: That is by making application?

"MR. PHILLIPS: They make application to the circuit court on petition.

"MR. COPE: Well, don't you think that that, in effect, is what would happen if the circuit judges would appoint two extra magistrates and they would both be drawing salaries?

"MR. PHILLIPS: Well, I haven't my file book before me but as I recall the language it's this 'that according to the needs of justice and the financial ability of the county the circuit court shall determine that question.'

"MR. COPE: Well, you know as a matter of practice it would be absolutely necessary for counties of less than 30,000 to have more than one magistrate court, don't you?

"MR. PHILLIPS: Well Senator, we had quite a long discussion in our sub-committee on that question, and I was the one that stood out for more magistrates on the ground that I thought I didn't know enough about the whole state of

> Missouri to put in a limitation that might not be applicable to all counties, and I was the one that fought for these extra two magistrates, and we thought, the Committee thought, that we were going beyond the necessary number when we provided for an extra two."

Also, on page 2822 of the transcript of the proceedings:

> "MR. ROBISON: * * * Some thought was expressed, in counties along the border line of 28, 29,000 and very probably the probate judge would not have that time. I think Mr. Moore from Grundy County made that suggestion, so we provided then that there might be additional magistrates appointed where they were needed and the financial conditions of the county were sufficient to justify it upon application to the circuit judge."

Further, on page 2842 of the transcript of the proceedings:

> "MR. SHEPLEY: Senator, why do you assume that there will be three magistrates in every county in Missouri?
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> "MR. COPE: As I understand it this file makes provision that the Circuit Court may make an order raising in counties of less than 30,000 raising the number to three. That is they can put on two extra. There is no provision here made here about who is going to appoint them. It's not true that under this provision the Circuit Court would appoint them, but when a petition is filed in the Circuit Court, the court will make an order putting on two extra and they must all be on salary just like the probate judge. You asked me why I assumed that it will be done. That's the only way that he could have any change of venue. We'd have to have more than one and then when it comes to casting up the election returns, the practice is for the County Clerk to call in either two judges of the County Court or two justices of the peace within five days after the election. They cast up their returns and they issue certifi-

> cates of election to those officials who are elected. Now, every four years all three of the county judges, if they do have three in a county, all three of them are up for election so they would be disqualified. The only two people that could be called in would be two justices of the peace and if the magistrates are to take over all of their duty, then they would at least have to have two."

From the above quotations from the debates, it is clearly apparent that the Constitutional Convention contemplated that the circuit court would have the authority to order the establishment of the additional magistrate court districts in counties containing less than 30,000 inhabitants when "the needs of justice may require."

There is another angle to be considered in connection with the determination of your question. The power to provide for the administration of the magistrate courts was given the General Assembly under the provisions of Section 21 of Article V of the Constitution of 1945, which reads as follows:

> "The general assembly shall provide for the administration of magistrate courts consistent with this Constitution."

Pursuant to this grant of power, the General Assembly has adopted Senate Bill No. 207, which we have examined. In this bill the General Assembly has purported to restrict the creation of additional magistrate courts except in counties greater in population than 30,000. Such restriction appears in the language used in lines 13, 14, 15 and 16 of Section 1, page 2, reading as follows:

> " * * * According to the needs of justice, <u>in counties of more than 30,000 inhabitants</u>, the foregoing number of magistrates in any county may be increased by not more than two * * *." (Emphasis ours.)

While it is true that the legislative construction placed upon a constitutional provision is entitled to great weight, yet such construction must give way to self-enforcing provisions of the Constitution. The people of the state

in adopting a constitutional provision may make such provision self-executing and place it beyond the power of the General Assembly to render it nugatory. We direct your attention to State ex inf. McKittrick v. Wymore, 119 S. W. (2d) 941, 343 Mo. 98, wherein the Supreme Court quoted with approval from its prior opinion in State ex inf. Norman v. Ellis, 325 Mo. 154, 28 S. W. (2d) 363, as follows:

> "'It is within the power of those who adopt a constitution to make some of its provisions self-executing, with the object of putting it beyond the power of the legislature to render such provisions nugatory by refusing to pass laws to carry them into effect. * * *.'"

We then think it pertinent to examine Section 18 of Article V from the viewpoint of determining whether or not its provisions relating to the creation of additional magistrate courts are self-executing. The rule is said to be that constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of rights created or enforcement of duties imposed. We quote from State ex inf. Norman v. Ellis, 28 S. W. (2d) 363, 325 Mo. 154:

> "The general rule is thus stated in 12 C. J., page 729:** 'Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed.'"

Also, to the same effect is McGrew Coal Co. v. Mellon, 287 S. W. 450, 315 Mo. 798; certiorari denied, 47 S. Ct. 456, 273 U. S. 752, 71 L. Ed. 874, from which we quote:

> "There can be no question that constitutional provisions, creating a right or imposing a duty or a liability, where none existed before, and making no provision for the passage of laws by the Legislature to enforce same, are self-enforcing."

It might be contended that the last sentence of Section 18 of Article V of the Constitution of 1945 would take the particu-

lar constitutional provision under consideration out of the rule. The last sentence reads:

> "The salaries of magistrates shall be paid from the source or sources prescribed by law."

We do not believe that such effect should be given to this portion of the constitutional provision. In McGrew Coal Co. v. Mellon, 287 S. W. 450, l. c. 454, the Supreme Court of Missouri cited Bandel v. Isaac, 13 Md. 202, in which case the Supreme Court of Maryland had under consideration a provision of the State Constitution (Art. 3, Sec. 49), which provided that not more than six per cent interest should be exacted and "the Legislature shall provide, by law, all necessary forfeitures and penalties," for the declaration that:

> "The provision for legislative action was directed only to the enactment of laws to provide for forfeiture and penalties, and such direction did not require legislative action to enforce the constitutional provision as a whole."

We think that the last sentence of Section 18 of Article V is merely directory to the General Assembly to provide for salaries of the various magistrates, and that it is not an integral part of the provision relating to the creation of the additional magistrate courts. It is within the power of the people, speaking through their constitution, or of the Legislature, to create offices without providing for compensation for the officers who shall thereafter fill them. It has also been held that constitutional provisions may be self-enforcing in part and not as a whole. We quote from State v. O'Malley, 117 S. W. (2d) 519, wherein the Supreme Court said:

> "A constitutional provision may be self-enforcing in part and not so as to another part. State ex inf. Barker v. Duncan, 265 Mo. 26, 41-43, 175 S. W. 940, 944, Ann. Cas. 1916D, 1. Undoubtedly, the part of the section permitting the opening of ballots in election contests is not self-enforcing, in the sense that further provision must be made by statute for such contests. But the part which provides for the use of the ballots as evidence in grand jury investigations is self-enforcing, and no legislative default can thwart it." (Emphasis ours.)

We think the entire situation is quite similar to that discussed in Railroad Co. v. State Board of Equalization, 64 Mo. 294. In the Constitution of 1875 there appeared Article X, Section 18, providing for the creation of a State Board of Equalization, naming the parties who were to comprise such board, prescribing its duties and transferring to it functions previously discharged by the State Senate. It was argued in the case cited that this provision was not self-enforcing for the reason that legislation was necessary to give it effect. The court, answering this contention, held:

> "* * * that the Board of Equalization under the new Constitution became at once the only board thereafter for that purpose, and was clothed with all the powers and duties of the board for which it was substituted, and its acts are valid and obligatory."

Although your letter of inquiry does not specifically refer thereto, we deem it advisable to give some consideration to whether or not magistrates elected or appointed in additional magistrate districts created by order of the circuit court may be compensated for their services, and if so, from what source such compensation should be derived.

It is elementary that any officer claiming compensation must be able to point out a statute authorizing his compensation, for in the absence of such statute, the rendition of his official services is deemed to be gratuitous. We quote from Nodaway County v. Kidder, 129 S. W. (2d) 857:

> "The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. * * *
>
> "It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. * * *"

Senate Bill No. 207 is the one prescribing the salaries to be received by all magistrates. We direct your attention particularly to Section 17 of such bill, which reads, in part, as follows:

> "The salaries of all magistrates shall be paid by the state, except that the state shall

> not pay the salaries of additional magistrates whose offices are created by order of the circuit court as provided for in Article V, Section 18 of the Constitution; but the districts assigned to such additional magistrates shall be designated as 'additional magistrate districts' and the salaries of such magistrates shall be paid by the county. The annual salaries of magistrates shall be as follows:
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> (Here follows a setting out of the salaries to be paid magistrates in the various brackets based upon population and assessed valuation as fixed by the General Assembly). "In all counties now or hereafter containing a population of 30,000 inhabitants or less, the salary of the magistrate as above provided shall include his compensation as probate judge of said county. * * * " (Emphasis ours.)

Were it not for the inclusion of the last sentence quoted, there could be no contention made but that the magistrates of the additional magistrate districts created by order of the circuit court in a county containing less than 30,000 inhabitants would be entitled to receive the compensation fixed for magistrates in such counties under the previous portion of the section. However, we do not believe that this sentence does have the effect of precluding such magistrates from being compensated for the discharge of their official duties.

It is a primary rule of statutory construction that the true intent and purpose of the Legislature should be ascertained, if possible, from the language used in the act itself. See Wentz v. Price Candy Co., 175 S. W. (2d) 852, 352 Mo. 1. To arrive at such intent, it is proper to consider the title of an act passed by the General Assembly. We quote from A. J. Meyer & Co. v. Unemployment Compensation Commission of Missouri, 152 S. W. (2d) 184, l. c. 189:

> " * * * Under our Constitution the Title of a statute is necessarily a part thereof, and is to be considered in construction. * * *"

The title of Senate Bill No. 207 reads as follows:

> "AN ACT to provide for the election, appointment, term of office, and the number of magis-

> trates and the manner of conducting such elections; to provide for the qualifications and commissioning, and resignation of magistrates; to provide for the establishment of magistrate courts and the original jurisdiction of magistrate courts in civil cases; to provide for clerks of the magistrate courts and their duties, and the salary of magistrates and clerks of the magistrate courts which shall include his compensation as probate judge in certain counties; to provide that magistrate courts shall be courts of record; to provide for process, pleading, practice and procedure in such courts; to provide for the force and effect of judgments and executions, and for a complete procedure of trial with and without jury, and for appeal; and to provide the operative date for certain sections hereunder, with an emergency clause."

It is immediately apparent upon reading this title that no prohibition is indicated therein against the payment of the salaries of such magistrates as we have under consideration.

Another rule of construction is that effect is to be given to all parts of the statute under construction. We quote from State ex rel. v. Mitchell, 181 S. W. (2d) 496, 352 Mo. 1156:

> "It is a further general rule that statutes are to be constructed, if possible, so as to harmonize and give effect to all their provisions. State ex rel. Mills v. Allen, 344 Mo. 743, 751(13), 128 S. W. 2d 1040, 1043(4). This necessarily requires that in determining the meaning of particular sections of a legislative act all other parts thereof should be consulted so far as they throw light thereon. * * * "

With this in mind, we direct your attention to that portion of Section 17, quoted supra, which has been emphasized by underscoring. Giving effect to this portion of the act and reading into it the constitutional provision referred to therein, which has been previously quoted on page 2 of this opinion, it seems to us clear that the General Assembly intended that

the salaries provided for in Section 17 should apply to all offices created in accordance with the constitutional provision. That this was the intent is further evidenced by reason of the fact that Section 1 of Senate Bill No. 207 does not provide for the appointment of additional magistrates in counties containing less than 30,000 inhabitants, yet this portion of the act is not referred to in Section 17, but rather reference is made to the constitutional provision.

It is a further rule of statutory construction that legislative enactments will not be construed in a manner leading to absurities. We quote from State v. Irvine, 72 S. W. (2d) 96, 335 Mo. 261:

> " * * * The courts will not so construe a statute as to make it require an impossibility or to lead to absurd results if it is susceptible of a reasonable interpretation. * * * "

Considering the effect of a construction of Senate Bill No. 207 which would deny to magistrates compensation for the discharge of their official duties, when such magistrates have been appointed or elected to serve in districts created by order of the circuit court, it becomes apparent that an unreasonable and absurd situation would be created.

From the above, we are persuaded to the view that no intent existed on the part of the General Assembly to deprive such magistrates of compensation when lawfully appointed or elected to office, and that their compensation should be paid by the county wherein they serve. This, of course, is the direct statement contained in that portion of Section 17 of Senate Bill No. 207, above quoted, wherein the following appears: " * * * the salaries of such magistrates shall be paid by the county."

CONCLUSION

In the premises, it is the opinion of this department that the circuit court of a county containing less than 30,000 inhabitants has the authority, upon petition, and upon a determination that the needs of justice require such action, to increase the number of magistrate courts in such county in a number not exceeding two.

We are further of the opinion that such magistrates so appointed or elected to serve in additional magistrate districts created by order of the circuit court are entitled to compensation for the discharge of their official duties in an amount determined in accordance with the brackets set out in Section 17 of Senate Bill No. 207, and that such salaries are to be paid by the counties wherein such additional magistrate districts are located.

Respectfully submitted,

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APPROVED:

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