

CONSTABLES: It is the duty of the several constables of St. Louis County to attend the magistrate court or courts of said county and to serve the process appertaining to the business of the court or courts. If any doubt exists as to what officer should discharge either of the above-mentioned duties, such question may be resolved by ordinance of the county council.



April 12, 1955

Hon. Edward W. Garnholz
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Sir:

Reference is made to your request for an opinion of this office, which request reads as follows:

"We wish to request an opinion of your office on the following matter:

"In St. Louis County, under the Charter, we are limited to four Constables and Constabulary Districts. However, we have five Magistrates and Magistrate Districts under the State law. Constable Districts One and Two each include a part of Magistrate District Five.

"Our question is what officer of this County is under a duty to, first, attend the sessions of Court in the Fifth Magistrate District, and second, to execute the process of the Court."

As you have indicated, St. Louis County has adopted a charter form of government authorized by Section 18 of Article VI of the Constitution of Missouri. Article II, Section 3, of the St. Louis County Charter adopted by vote of the people on March 28, 1950, relating to elective county officers, provides that there shall be elected "four constables." This provision is in conformity with Section 18(b) of Article VI of the Constitution of Missouri which provides that the charter shall provide for the number and kinds of county officers. Said constitutional provision further provides that the charter shall

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provide for "the exercise of all powers and duties of * * * county officers prescribed by the Constitution and laws of the state." Section 2 of Article I of the county charter does so provide in the following language: "The County shall have all the powers now or hereafter vested by the Constitution and laws of Missouri in * * * county offices, * * * and all the powers provided in this Charter, * * *."

The general statutory provisions relating to the office of constable are found in Chapter 63, Revised Statutes of Missouri 1949. Section 63.065, RSMo Cum. Supp. 1953, provides for the duties of constable as follows:

"In all counties of the first class operating under a charter form of government a constable shall devote his entire time to the duties of his office and shall serve and execute all warrants, writs of attachment, subpoenas and all other process, both civil and criminal, appertaining to the business of such magistrate district, and he shall act as conservator of the peace within his county. He or a deputy shall attend the magistrate court of his district when in session, preserve order therein, and perform such other duties as may be directed by the magistrate or provided by law, and shall be authorized to execute and serve process outside of his district, and at any place within the county. Writs and process directed from one county to any county in the first class may run in the name of any constable in the county."

While this office has held in an opinion to Stanley Wallach, prosecuting attorney, St. Louis County, under date of October 30, 1953, that certain provisions of Chapter 63 were, insofar as they attempted to establish offices or fix the salary of officers, violative of Section 18(e) of Article VI of the Constitution, we are of the opinion that said constitutional provision did not render void other provisions relating to the duties of an office so far as they have been made applicable by the Constitution and charter. A copy of the opinion of this office referred to is herewith enclosed for your information.

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It is to be noted that Section 63.065 provides that a constable shall serve and execute all warrants, writs of attachment, subpoenas and all other process appertaining to the business of the magistrate "courts" in his county. We note also that it is provided that a constable shall attend the magistrate court of his district when in session. The latter-noted provision is somewhat meaningless, in view of the fact that magistrate courts in counties having more than one magistrate do not sit in districts. Article V, Section 19, of the Constitution provides that each magistrate in counties having more than one magistrate shall have jurisdiction coextensive with the county. Therefore, we are of the opinion that each constable is authorized and empowered to attend and serve the process of each magistrate in the county. Insofar as the duties may be overlapping or doubtful, we direct your attention to Section 96 of the St. Louis county charter, which provides as follows:

"If any doubt shall exist as to what department, officer or agency of the County should exercise or perform any power or duty conferred or imposed by law or by this Charter, the Council by ordinance shall specify by whom such power or duty shall be exercised or performed."

CONCLUSION

Therefore, it is the opinion of this office that it is the duty of the several constables of St. Louis County to attend the magistrate court or courts of said county and to serve the process appertaining to the business of the court or courts. It is the further opinion of this office that if any doubt exists as to what officer should discharge either of the above-mentioned duties, such question may be resolved by ordinance of the county council.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

DDG/vtl
Enc.- 10-30-53 to Stanley Wallach