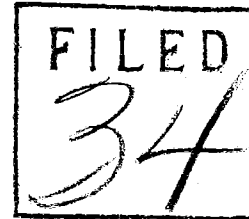


TOWNSHIP ORGANIZATION - Board of Directors of township
may furnish an office for justices
of the peace. However, there is
no statutory duty to do so.

July 9, 1941

7-11



Hon. Arthur U. Goodman, Jr.
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Sir:

We are in receipt of your request for an opinion,
under date of July 3, 1941, which reads as follows:

"Dunklin County operates under the township organization law, and a controversy has arisen in one of our townships relative to the township board furnishing office space in their office for a justice of the peace. The members of the township board leased an office and same was occupied and used by the clerk & assessor, treasurer & trustee, board members, tax collector, and two justices of the peace. However, the board decided to move the office and notified one or possibly both justices there would not be room for them to have space in the new office, or words to that effect, according to my information.

"Please favor me with an opinion as to whether, under the above facts,

Hon. Arthur U. Goodman, Jr. (2)

July 9, 1941

a justice of the peace is entitled to use a part of the township office for his official business."

Section 13945 R. S. Missouri, 1939, reads as follows:

"There shall be chosen at the biennial election in each township one trustee, who shall be ex officio treasurer of the township, one township collector, and one township clerk, who shall be ex officio township assessor, one constable, two members of the board, and two justices of the peace: Provided, the same persons may be elected members of the board and justices of the peace, at the same election, and hold both offices; also the same person may be elected constable and collector at the same election and hold both offices at the same time, by taking the proper oath of each office and giving the bond required by law."

It will be noted from reading this Section, that the office of justice of the peace stands on an equal footing with the other offices to be chosen in the township. Further, it will be noted, in Section 13946 R. S. Missouri, 1939, that provision is made for election of additional justices of the peace, in townships of certain population.

Section 13933 R. S. Missouri, 1939, provides as follows:

"Each township, as a body corporate, shall have power and capacity: First,

July 9, 1941

to sue and be sued, in the manner provided by the laws of this state; second, to purchase and hold real estate within its own limits for the use of its inhabitants, subject to the power of the general assembly; third, to make such contracts, purchase and hold personal property, and so much thereof as may be necessary to the exercise of its corporate or administrative powers; fourth, to make such orders for the disposition, regulation or use of its corporate property as may be conducive to the interest of the inhabitants thereof; fifth, to purchase at any public sale, for the use of said township, any real estate which may be necessary to secure any debt to said township, or the inhabitants thereof, in their corporate capacity, and to dispose of the same."

In the interpretation of this Section, we call attention to the case of State ex rel Jordon v. Haynes, 72 Mo. 377, l. c. 379, where the court said:

"A building suitable for the purposes of township meetings, as well as for the various officers of the township, would seem to be as much a necessity as a similar provision for county officers. The legislature certainly never contemplated that a township should not possess ordinary facilities for the transaction of its corporate business. Will it be seriously contended that such business should be transacted in the open air? If, as much be admitted from the express language of the law, the township has the power

July 9, 1941

'to purchase and hold real estate within its own limits, for the use of its inhabitants,' to what conceivable purpose could such purchase be applied, except for the purpose which resulted in the issuance of the warrant in controversy? We are certainly at a loss to conceive of any other. In Wisconsin, under a similar statute, it was held that: 'The public use of the inhabitants demanded a sufficient and convenient room for all election and town meeting purposes.' *Town of Beaver Dam v. Frings*, 17 Wis. 398. From the foregoing considerations and authority, we take it to be very clear that the purchase of the site and the erection of the hall thereon, was abundantly authorized.

"The only remaining point requiring discussion is, as to whether the powers conferred for the purposes mentioned were to be exercised by the citizens of the township assembled en masse, or by the board of directors. We think by the latter. * * *"

You will note from reading this decision of the Supreme Court that nearly an identical situation arose in this case as the one to which you refer in your opinion request. Through the enactment of Section 13945, supra, it is evident that the legislature has placed justices of the peace on an equal footing with other township officers, and we think rightly so, because of the importance of their office, in both civil and criminal cases.

As said in the Haynes case, supra, could it be "seriously contended that such business should be transacted in the open air?"

Hon. Arthur U. Goodman, Jr. (5) July 9, 1941

We are of the opinion that the Haynes case, supra, is only authority for the proposition that the Board of Directors of the Township may, if they see fit, provide suitable office space for township offices. However, it will be noted in reading the various Sections contained in Chapter 101 R. S. Missouri, 1939, that there does not appear any Section which casts a statutory duty upon the Board of Directors to furnish an office to the justices of the peace of the township.

CONCLUSION.

We are of the opinion that under the authority of the case of Jordon v. Haynes, supra, that the Board of Directors may furnish an office to a justice of the peace, but there is no statutory duty cast upon the Board to furnish an office. Therefore, it is discretionary with the Board.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

VANE C. THURLO
(Acting) Attorney General

BRC:RW