

JUSTICES OF THE PEACE:) Wife of justice of the peace may not perform
OFFICERS:) his duties of office during his absence as
a member of the Armed Forces.

April 17, 1944



Honorable W. Oliver Rasch
Prosecuting Attorney
Jefferson County
Festus, Missouri

Dear Sir:

The Attorney-General acknowledges receipt of your letter of April 8, 1944, wherein you request the opinion of this Department. Your letter of request reads as follows:

"Benjamin Matthews is a Justice of the Peace in Joachim Township in this County. He has a large number of civil cases that have been filed before him. Some of these cases are pending, and judgments have been obtained in others.

"Mr. Matthews will be inducted into the armed forces on April 17, 1944. Naturally he will not resign, and therefore no one will be in charge of his office to handle the pending cases, or to issue executions or transcripts in the cases where judgments have been obtained.

"Mr. Matthews would like to have his wife handle his business while he is away. Is there any way in which she could be appointed or authorized to handle this business, without his resigning as Justice of the Peace?"

A diligent search fails to produce any statutory authority whereby a wife could be authorized to perform the duties of her husband, a justice of the peace, during his absence as a member of the Armed Forces. Indeed, our Supreme Court is aware of this situation and in the case of *State ex inf. McKittrick v. Wilson*, 166 S. W. (2d) 499, Judge Douglas states at page 502:

April 17, 1944

"We can readily anticipate that local inconvenience can result where an office-holder goes to war. It seems to us that some provision might be made, where there is none at present, for a substitute, an officer locum tenens, to fill the office while the regular officer is performing the greater duty of defending his country. Wounded soldiers are already returning to civilian life. Supposing there is an office-holder among them, would there be anyone who would not agree but that he should serve out his term of office if he were able? So it should be with every soldier who has the good luck to return. * * * *

"However, the matter of providing for substitute officers is for the attention of the Legislature which will convene within a month. * * *" (Emphasis ours.)

The Legislature has passed no law providing for substitute officers in accordance with the suggestion contained in the above quoted opinion.

Conclusion

It is the opinion of this Department that there is no statutory provision authorizing appointment of a substitute to act for a justice of the peace, where such officer is absent owing to induction into military service.

Respectfully submitted,

RALPH C. LASHLY
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

RCL:EG