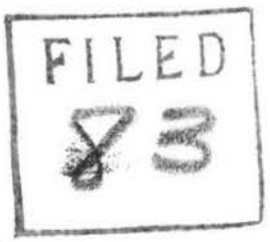
COUNTY COURT: Presiding Judge unauthorized by any Missouri statute to adjourn court on his own motion, when all three judges are present and when motion is not presented to entire court and adopted by a majority of the members present, voting in favor of motion.

September 6, 1960



Honorable Charles H. Sloan
Prosecuting Attorney
Ray County
Richmond, Missouri

Dear Mr. Sloan:

This office is in receipt of your recent request for a legal opinion, which reads as follows:

> "Can the Presiding Judge of the County Court adjourn a court hearing on his own motion when the other two associate judges wish to stay in session?"

Article VI, Section 7, Constitution of Missouri, provides for county courts, the number of members, their powers and duties. Said section reads as follows:

> "In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provided by law."

Various statutory provisions implement the above quoted constitutional provisions and will be referred to in the course of our discussion herein.

The first of these statutes is Section 49.020, RSMo 1949. Said section provides for the election of a county court judge by the qualified voters of each district of the county, who shall hold his office for a term of two years and until his successor is duly elected and qualified. A presiding judge of the county court shall

also be elected by the qualified voters of the county, at large, who shall hold his office for a term of four years and until his successor is duly elected and qualified. Each county judge shall enter upon the discharge of his duties on the first of January next after his election.

The term of office of a county judge in a county having a population of not less than 250,000 and not more than 450,000 inhabitants, is fixed at four years by Section 49.030, RSMo 1949.

Ray County has less than 250,000 inhabitants, hence the election and term of office of each county judge elected therein is governed by Section 49.020 and not by Section 49.030.

Section 49.070, RSMo Cumulative Supplement 1957, provides how many judges of the county court shall constitute a quorum, and reads as follows:

> "A majority of the judges of the county court shall constitute a quorum to do business; a single member may adjourn from day to day, and require the attendance of those absent; when but two judges are sitting and they shall disagree in any matter submitted to them, the decision of the presiding judge shall stand as the decision of the court; provided further when the presiding judge is absent and the other two judges are present the county clerk shall designate one of such judges present as presiding judge during the absence of the regular presiding judge, and such judge shall during the absence of the regular presiding judge have all of the powers of the regular presiding judge."

In this connection it is believed proper to consider some of the characteristics and powers of that body to which individual members are elected in each county of the state, namely, county courts.

In the case of Rippeto v. Thompson, 216 S.W. 2d 505, the Supreme Court held that under provisions of the new Constitution of Missouri, county courts are no longer vested with judicial power, are not courts of record, and they are not what is generally referred to as courts of law. Their status has been reduced to that of ministerial bodies to manage the county's business. This appears to be particularly true with reference to financial affairs of the county.

Again, in the case of Bradford v. Phelps County, 210 S.W. 2d 996, it was held that a county court is only the agent of the county with no powers except those granted and limited by law, and, like other agents, it must pursue its authority and act within the scope

of its powers.

By analogy, it appears that each individual member of the county court would possess only those powers as such public officials, which have been expressly granted to them by statute or those necessarily implied from such statute.

A careful examination of Chapter 49, RSMo 1949, on county courts, fails to disclose any statutory grant of official powers and duties to the presiding judge of a county court which are any different from, or in addition to those conferred upon the other judges of the court, with one possible exception found in Section 49.070, supra, and referred to in the next paragraph.

It will be recalled that Section 49.070 refers to instances when two judges are present and they disagree upon any matter submitted to them, the decision of the presiding judge shall stand as the decision of the court. The section further refers to instances when the presiding judge is absent and the two associate judges are present, that the judge designated as presiding judge by the county clerk shall have all the powers of the regular presiding judge during the absence of such judge.

This latter portion of the section implies that if the two judges are unable to agree upon any matter of business before the court, the decision of the one designated to act as presiding judge shall stand as the decision of the court.

As the title to his office indicates, it is the duty of the presiding judge, or president, to preside over each session of the court. It is incumbent upon him to present all matters before the court. Except in the instances referred to above, his vote upon any proposition for decision of the court counts no more than that of any other member, and his decision alone, except in such instances referred to above, is not the decision of the court.

Subject to the abovementioned exception, it is our thought that the lawmakers did not intend for the presiding judge to have any greater power or authority to make final decisions upon court business than the other judges. Rather, it appears to be the legislative intent that each judge should have an equal voice and vote upon all matters of business properly before the court.

It is interesting to observe how such a situation is looked upon and dealt with in other jurisdictions. In this connection we call attention to the case of Hansbro v. Neiderhofer, 83 S.W.2d 685, and which we believe fully supports the foregoing remarks.

The Civil Appeals Court of Texas had before it for decision

a question involving the power of a county judge, who, under Texas statutes, was presiding judge of the Commissioners' Court. Such Court is very similar in many respects to a Missouri county court. In this case it was held the presiding judge of a commissioners' court had no discretion in receiving and submitting all motions to a vote of the court and, for a refusal to perform this ministerial duty, he could be compelled to do so by mandamus. At l.c. 685, 686, the court said:

> "The commissioners' court having jurisdiction of the matter, the county judge, as its presiding officer, has no discretion in receiving motions offered in the regular discharge of the court's business, and submitting said motions to a vote of the members of the court for their decision, but must permit the members composing the court to exercise their will in adopting or rejecting such proposals. While an official cannot be mandamused to do an act in a certain way which involves his discretion, yet when he refuses to discharge the duties devolving upon him in any way, that is, refuses to act at all, he may by mandamus be compelled to act. 28 Tex. Jur. pp.537-540, §13, and authorities cited. The receiving of motions and submitting them to a vote of the court does not involve the discretion of the county judge presiding over the commissioners' court, and so his acts in that capacity are merely ministerial. If he could, as he chose, refuse to receive a motion, when duly seconded, and refuse to allow the members of the court to vote on same, in the matter such as here involved, he could do so in other matters, and thus reduce the court to the pleasure, judgment, or will of the presiding officer, which is contrary to the purpose for which the court was created, and a perversion of the powers conferred upon the court by law."

In the absence of any applicable Missouri appellate court decisions as to the extent of the statutory grant of power to the presiding judge of a county court, it is believed the above cited case is in point with our foregoing remarks, and that in all probability said decision would be persuasive authority for a Missouri appellate court in making a similar decision with reference to the powers of a presiding judge of a Missouri county

court, if and when such question will have been submitted to the appellate court.

Absent any Missouri decisions in point, it is believed the above cited Texas decision is fully applicable to the present situation, and substantiates the views expressed herein, concerning the lack of any statutory grant of power to a presiding judge to adjourn court without first putting his motion before the entire court and obtaining a majority vote of those present and voting in favor of the adjournment.

Therefore, in view of the foregoing, our answer to the inquiry of the opinion request is in the negative.

CONCLUSION

Therefore, it is the opinion of this office that the presiding judge of a county court is unauthorized by any Missouri statute to adjourn a session of said court upon his own motion when all three judges are present and when said motion has not been presented to the entire court and adopted by a majority of the members present, voting in favor of such motion.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

PNC:lc:mw