"CIRCUIT JUDGES: City of St. Louis, when terms of office begin."

12-28

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Hon. Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

You have requested a ruling on the date upon which the nine circuit judges for the City of St. Louis elected in November, 1934, for terms of six years, take office, there being some difference of opinion as to whether such judges take office on January first, 1935, or on the first Monday in January, which is January seventh, 1935.

Presumably all of such nine judges would assume office on the same date. Considerable confusion would result if some were to take office on January first and some on January seventh, both in 1935 and upon the election of their successors. Also these nine judges were elected without classification, and not to preside over any particular division of the circuit court, and if it were determined that a certain number of them should take office on one day, and the remainder on another day, there would be no possible method of distinguishing the two groups. Consequently our conclusion must be that all of these nine judges take office on the same day, if such a construction is possible under, and not forbidden by, the Constitution and statutes of this state.

At the outset of this analysis let it be remarked that the Constitution and the various statutes present certain ambiguities and inconsistencies which can only be understood by an historical resume, which will constitute the bulk of this opinion. So many provisions must be referred to that to prevent further lengthening this opinion their substance only will be indicated in frequent instances, with references to the source at which the enactment itself may be found.

Before the Constitution of 1865 went into effect
A there was only one circuit judge of the County of St. Louis. That constitution (Article VI, Section XV) provided three judges for the circuit court of such county. (In the present constitutional provision (VI,27) the designation "County of St. Louis" is likewise used, as it was enacted prior to the separation of city and county, but this factor is of no significance). The constitution of 1865, which first created a multi-cameral circuit court for St. Louis will therefore be the logical historical starting-point. In the constitution of 1865, Article VI, Section XV provided that three circuit judges should be elected at the general election of 1868, that after their election and assumption of office such judges should by lot determine the duration of their several terms, which should be two, four and six years respectively, that at the general election every two years thereafter one judge of such court should be elected for the term of six years, beginning the first Monday in January next ensuing. Section XIV of such Article VI, which related to circuit judges, and was of state-wide application, contained the following:

> "At the general election in the year one thousand eight hundred and sixty-eight, and at the general election every sixth year thereafter, except as hereinafter provided, all the circuit judges shall be elected, and shall enter upon their offices on the first Monday of January next ensuing."

Following a practice which is still prevalent, the General Assembly placed in the General Statutes of 1865 a section almost identical to the above quotation. (Ch.136, Sec.I)

1870 Statute — In 1870 the General Assembly provided that "from and after the first Monday of January, 1871," the circuit court of St. Louis should be composed of five judges, the additional judges (the power to increase the number of judges was given to the General Assembly by the Constitution of 1865, VI, XV) to serve for six year terms.

1875 Constitution — In 1875 a new constitution went into effect, which in so far as it is relevant, is in force unchanged at the present time. Nothing is said in this constitution relating to the date when circuit judges assume office. It is, however, provided in Article VI, Sec. 25 that the terms of office of circuit judges shall be six years. In 1875 there were five circuit judges of St. Louis in office, three whose terms were to expire on the first Monday in January, 1877, one whose term was to expire on the first Monday in January 1879, and the fifth whose term was to expire on the first Monday in January, 1881. Each of these judges had been elected for a term of six years. The constitution of 1875

provided that the term of circuit judges should be six years, so apparently there was nothing new to disturb the status quo. Furthermore, the statute of 1865, (Ch. 136 Sec. I) referred to above, which was almost identical to the constitution l provision of 1865 quoted above, which provided that the terms of all circuit judges should begin on the first Monday of January, was left in force (in fact, without change until 1892, and with such 1892 changes until the present, as R.S. 1929 Sec.1937). No further changes were made in the applicable provisions until 1892, during which time a circuit judge or judges were elected every two years, to succeed judges whose terms expired on the first Monday of January in the respective years following such elections.

1892 Statute

In 1892 the statute which has been referred to above as the statute of 1865 was amended. (Laws 1892 p. 9). The chief difference between such statute and the constitutional provision had been that instead of the phrase "except as hereinafter provided, which is in the constitutional provision of 1865 quoted above, there had been in the statute in place of the same the phrase "except as otherwise provided by law." Such section had provided for the election of all the circuit judges in the state at the general election of 1868, and every sixth year thereafter, but the constitution of 1865 had provided that there should be an election of a circuit judge for St. Louis every two years, and it must have been to this difference that the exception in the constitution and statute of 1865 referred, ie. the time of the election of judges, and not the time at which their terms begin. The grammatical position of the exception and the substantive nature thereof both confirm the interpretation. Now in 1892 there was a proviso added to the statute of 1865 as follows:

> "Provided further, that nothing contained in this section shall be construed as changing the law now in force concerning the election of circuit judges in the City of St.Louis and the County of Buchanan."

With the addition of this proviso ~~ee~~ the phrase "except as otherwise provided by law" was deleted, and in a form so changed this statute appears as R.S.1929 Sec. 1937.

A major question arises because of this 1892 enactment. If it meant to refer to the law regarding the date when the terms of the St. Louis circuit judges take office, and by its very presence as an exception in the statute to refer to some law then in force making the terms of the St. Louis

circuit judges begin on a different day from the beginning of the terms of all the other circuit judges in the state, then the presumption would be that the St. Louis circuit judges do not begin their terms on the first Monday in January. However, in 1892 the law applicable to the St. Louis circuit judges made their terms begin on Mondays, and all the judges then in office were elected for terms which had begun on Mondays, and all the other circuit judges in the state had likewise begun their terms on Mondays. Therefore the law as far as it concerns the day terms commence was the same for St. Louis and the rest of the State, and the proviso added in 1892 would be meaningless and unnecessary. If, however, the proviso meant to make an exception as to the time of election of the St. Louis circuit judges, its effectiveness and desirability is immediately apparent, for here the law applicable to St. Louis (and Buchanan County, as will be discussed more fully later) did in 1892 differ from the law regarding the election of judges in other counties of this state.

The Constitution of 1865 provided that one Judge of the Circuit Court of St. Louis should be elected every two years, and the statute of 1865 provided that all Circuit Judges should be elected in 1868 and every six years thereafter, except as otherwise provided by law. When the Constitution of 1865 was superseded by the Constitution of 1875 there was no provision in the Constitution of 1875 or any statute taking the election of the St. Louis judges out of the general operation of the 1865 statute. This situation continued until 1892. To remedy this situation the General Assembly of 1892 added the proviso to the 1865 statute clearly for the purpose of making it definite and certain that the old law relating to the time of the election of the St. Louis judges wasin full force and effect and that the statute relative to the election of Circuit Judges other than the City of St. Louis every six years beginning with 1868 didnot apply to the election of Circuit Judges in the City of St. Louis.

Therefore, it is evident that the election of the St. Louis judges differed from all other Circuit Judges, but not in the time of beginning their terms. Such distinction from 1865 to 1875 being in the constitution, from 1875 to 1892 in the exception in the 1865 statute, and from 1892 to date in the proviso as added in that year to the 1865 statute, which is now R. S. 1929 Sec. 1937.

1895
Statutes

In 1895 the number of judges of the St. Louis circuit court was increased for the first time since the adoption of the Constitution of 1875. In an Act effective March 26, 1895, (Laws 1895 p. 130) it was provided that "on and after the first Monday of January, 1897," the court should consist of nine judges, the five then in office and four new judges, and that five judges were to be elected in 1896, 3 for 6 year terms and two for two year terms. (The term of one judge of the court who was on the bench in 1895 was to expire the first Monday in January, 1897). The successors of all of said new judges were to be thereafter elected for six year terms. Thus after 1896 all nine judges began their terms on first Mondays, as had the five who were on the bench before this number was increased, and as had the original three judges elected in 1868.

N.B. Another Act was enacted in 1895, (Laws 1895 p.130) with an effective date of March 12, increasing the court, as of the effective date of the Act, to 7 judges, two new judges to be appointed to serve until December 31, 1896, and two successors to be elected in 1896, one for two years and one for six years, with the successors of the new judges elected in 1896 to have terms of six years each. From the fact that the Act of March 26, 1895, covers these two additions, and that the Act of March 26, 1895, speaking as of its effective date, refers to "the five judges now constituting said court," when if the Act of March 12, 1895, was to be operative there must have been seven judges constituting the court on March 26, 1895, it seems that the Act of March 26, 1895, repealed and superseded the Act of March 12, 1895, so the latter will be considered no further and the former will hereafter be called "the Act of 1895."

There can be no doubt that the Act of 1895 fixed the terms of the judges created thereby as beginning on Mondays. This is apparent from Section 11a thereof, in which the above provisions are found, and in sections 12, 13, 14, 15 and 16 thereof, in all of which specific functions and attributes of the court are designated as beginning on the first Monday of January. This was the first comprehensive scheme of statutes enacted relating particularly to the St. Louis circuit court, and these sections were carried into the revision of 1899 as Art. XVII entitled "St. Louis Circuit Court",

of the Scheme and Charter St.Louis, as ~~Laws~~ Sections 33 et seq. of such article. In the 1909 revision this article so entitled was put into the chapter on "Courts of Record" (R.S.1909 Chapter 35, Art.8) and in the 1929 revision it is article 7 of Chapter 9. Much of the original Act of 1895 is still in force, with the specific provisions regarding the first Monday in January, and especially noteworthy is Sec. 2112 of the 1929 statutes providing that the compensation of the St. Louis circuit judges to be received from the city shall begin on the first Monday of January,1897. If the compensation from the city began on that date, and continued for six years, for the performance of duties during that six year period as judges, as this statute provides, it would seem to be a very strong argument against the compensation paid by the state beginning earlier and ending earlier, when such state compensation also was to be paid for six years for the performance of the duties of judge during such six year period.

Thus after the effective date of the 1895 Act it made no difference if the 1865 statute (as amended in 1882) or the 1895 statute be referred to as to the beginning of the term of circuit judges, for both provided that the terms should begin on first Mondays.

Statutes Since 1900

No further applicable enactments occurred before 1900. Since 1900, the court has been increased from 9 to 18 judges, by additions of one or two judges at a time. (Laws 1903 p. 142 increasing to eleven; Laws 1905 p. 127, increasing to twelve; Laws 1915 p. 264, increasing to fourteen; Laws 1921 p. 201, increasing to 16; Laws 1929 p. 149, increasing to 18). These Acts are all in substantially an identical form. Only the first section of each one has found itself into any revision of the statutes. Each Act has used the same machinery for the increase, i.e., a declaration that from the effective date of the Act, the court shall consist of the enlarged number of judges, that the governor shall appoint the new judges to serve until December 31 of the year following the enactment, and that the successors of such appointive judges shall be elected in the year following the enactment, for terms of six years each. Nothing is said about when the terms of the first new judges elected under the current enactment shall begin their terms, unless such date can be inferred from the date on which the terms of their appointed predecessors expire. As a specimen of such acts the 1903 Act is set out below, (Sec.5, the emergency clause, is omitted.)

"Section 1. From and after the taking effect of this act the circuit court of the city of St. Louis shall be composed of eleven judges.

"Sec. 2. Immediately on the taking effect of this act the governor shall appoint two judges of said circuit court for a term ending on the 31st day of December,1904, and the said additional judges hereby provided for shall possess the same qualifications and shall receive the same compensation and from the same sources as the present judges of said circuit court.

"Sec. 3. At the general election held in the city of St. Louis in November,1904, successors to said additional judges hereby created shall be elected for a term of six years and thereafter their successors shall be elected for the same term.

"Sec. 4. All acts and parts of acts inconsistent with this act are hereby repealed."

Hereafter the discussion of this 1903 act will be deemed to apply with like force to the acts subsequent to it.

It would certainly seem that the successors of the two judges appointed in 1903, with terms expiring December 31, 1904, would be intended to succeed such appointed judges without leaving a gap in the office, (i.e. a gap from December 31st,1904, to the first Monday in January of 1905). However, at the general election in St.Louis in 1904, in addition to the two new judges to be elected under the 1903 statute, there were three other judges to be elected to succeed the three judges in office when the 1903 statute was enacted whose terms were to expire on the first Monday of January, 1905. Therefore three of the five judges elected in 1904 could not take office until the first Monday of 1905 without reducing the terms of their predecessors to less than six years. To say that the other two judges elected in 1904 should take office on January first, and their three colleagues elected at the same time should take office later, would be a curious statutory scheme. Which of these five judges elected in 1904 could claim to take office on January first? Clearly all could not, for the court under the 1903 act could only consist of eleven judges, and nine of the eleven had been elected and had taken office on the first Monday of January following their election, and the constitution fixed their terms at six years and gave them the right to stay in office that long. There is no provision for casting lots as there was in the constitution of 1865. Since these five judges elected in 1904 were elected generally to the circuit court, and were not and could not have been elected to fill any particular

divisions thereof, there is no possible way of fixing definitely and by law a method of segregation or classification of them.

In each of the acts increasing the court after 1903 the same problem is presented, so that nine of the present incumbents are successors (after various mesne successions) of judges whose terms, of six years each, did not expire until the first Monday in January of the seventh year after their elections, while the other nine present incumbents are successors of judges added to the court since 1900, whose earliest elective predecessors succeeded appointive interim judges whose terms expired on December 31 of the years following the acts creating their offices. Three of the judges whose terms are now about to expire are successors of the 19th century judges, while the other six are successors of judges whose offices were created after 1900. (These computations can readily be made by diagrams, for which the information already set out will be sufficient).

The natural first inference from the provision of each of the 1903 and later acts for the appointment of temporary interim judges whose terms expire December 31 of the year following their appointments, would be that the General Assembly thought that the terms of all the St. Louis circuit judges began on the first of the year. However, each of these provisions was a temporary one, (i.e. it only was effective once, on the December 31 of the year after the enactment) which never found its way into the revisions of the statutes. Also at the time of each of these acts (1903 et seq.) there were in force the general statute of 1865 as amended in 1892 to the effect that all circuit judges begin their terms on the first Mondays of January, and the act of 1895 relating particularly to the circuit court of the City of St.Louis, with the various provisions relating to the beginning of the functioning of such court on the first Monday of January, 1897. Under these latter two acts and the constitutional provision fixing six year terms, it would need reasonably clear language to work an implied repeal of such acts, especially when such a repeal would deprive some judges of parts of their six year terms for which they were elected. Thus it would seem that the three judges elected in 1904 to take the places of the three judges elected in 1898 for six year terms expiring the first Monday of January, 1905, could not take office until the first Monday of January, 1905.

The remaining question is if the two new judges elected in 1904 to take the offices created by the 1903 act take or should have taken office on January first, 1905, or along with their colleagues elected with them on the first Monday

of January,1905. The answer to this question will likewise solve the problem of additional judges created under the later acts, for no new inferences (other than cumulative force) are offered by such later acts. As has been said, there was no way of telling which of the five judges elected in 1908 were elected to take office on January first, 1905, assuming that they were to take office at different times. As an argument against such assumption is the principle that statutes should be read together.

"A statute is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws. It is not to be expected that a statute which takes its place in a general system of jurisprudence shall be so perfect as to require no support from the rules and statutes of the system of which it becomes a part, or so clear in all its terms as to furnish in itself all the light needed for its construction. It is proper to look at other statutes, to the rules of the common law, to the sources from which the statute was derived, to the general principles of equity, to the object of the statute, and to the condition of affairs existing when the statute was adopted. (Citing authorities) . . . 'Construction has ever been a potent agency in harmonizing the operation of statutes with equity and justice.' Statutes are to be so construed as to make the law one uniform system, not a collection of divers and disjointed fragments. When this principal of construction is adopted, 'an enactment of to-day has the benefit of judicial renderings extending back through centuries of past legislation' (Bishop, Written Laws, sec. 242b.) 'A statute,' says the author just referred to, 'must be construed equally by itself and by the rest of the law. The mind of the interpreter, if narrow, will stumble.' 'The completed doctrine,resulting from a bringing together of its parts, is, that all laws, written and unwritten, of whatever sorts and at whatever different dates established, are to be construed together, contracting, expanding, limiting and extending one another into one system of jurisprudence as nearly harmonious and rounded as it can be made without violating unyielding written or unwritten terms.'"

State ex inf.Major v. Amick, 247 Mo.271,290, 152 S.W.691 (1912).

If all the judges elected in any one year in St. Louis should begin their terms at the same time, in each general election some of the judges are elected to succeed judges whose terms do not expire until the first Monday of January

next, and consequently they cannot begin their terms on January first, and since an inference (from the December 31st expiration of terms of interim judges) is necessary to require the other judges to begin their terms on January first, that inference should not be drawn.

It may be said that to say that the two judges appointed in 1903 whose terms were to expire December 31, 1904, are to be succeeded by judges whose terms are not to begin until the first Monday in 1905, so that the court should consist of eleven judges from the appointments under the 1903 act until December 31st, 1904, with an hiatus from the latter date until the first Monday of 1906, during which hiatus only nine judges were on the bench, with the full bench resumed after such first Monday, is a construction reaching a result so peculiar that it should be avoided if possible. However, the alternative construction presents an absurdity which is even worse, for such alternative construction would result in a permanent evil, recurring after every general election so as to cause an hiatus at each such time, while the construction here advanced presents only a peculiarity which happens but once for each increase in the number of the judges of the court. Also the alternative construction presents a dilemma, which the present law offers no solution, while this construction offers at least a clear, workable rule which, if enforced, will constitute a permanent solution.

The strongest argument for the alternative construction is that it would be ridiculous for the General Assembly to have provided, in every act increasing the court since 1900, that there should be a gap the year after each enactment from December 31st to the first Monday in January next in the office of the additional judges created by such acts, and that therefore the inference must be drawn that the General Assembly meant the new terms of such additional elected judges to begin on January first. The General Assembly, however, apparently can consciously face such gaps with equanimity, for in an act of 1889 (Laws 1889 p.74) increasing the number of circuit judges of Buchanan County from one to two, an interim judge (like those under the St. Louis acts of 1903 et seq.) was provided for, to be appointed to serve until December 31, 1890, and it was provided in the same section of the act that the successor of such interim judge should begin his term on the first Monday of January, 1891. January first, 1891, was a Thursday.

Three of the nine present incumbents of the Circuit Court of the City of St. Louis, whose successors were elected in 1934, are successors (after many mesne successions) of judges of that court who were elected for terms not to end until a first Monday of January. These original judges were guaranteed by the Constitution of Missouri six year terms, as were their successors, so the chain of six-year terms down to 1935 as to such three judges should not and cannot form its next link until January 7,1935. The fact that any or all of these nine incumbents or any of their predecessors may have taken office on January first in the past of the year after they were elected could not alter the constitutional and statutory scheme which fixes the termini at first Mondays in Januarys six years apart.

In conclusion, it is our opinion that under the present law the terms of all judges of the Circuit Court of the City of St. Louis begin on the first Monday of the January next ensuing after their elections.

Edward N. Miller
Assistant Attorney General.

Approved:

Attorney General.