

MAGISTRATE COURTS: Providing for establishing and maintaining
of offices of magistrates.

W. P. Smith

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Honorable Erwin F. Vetter
St. Louis County Law Department
Clayton, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you submit a request for an official opinion from this department which is as follows:

"The question has arisen here as to the authority of the County Court to appropriate out of the general revenue fund of the County such sums as may be necessary to establish and maintain the magistrate courts created under the provisions of Senate Bill No. 207. It is estimated that the establishment and maintenance of these courts in St. Louis County will cost approximately \$40,000.00 annually.

"The Bill provides for the payment to the State of all fees collected and the State is required to pay the salaries of the magistrates and their clerks.

"Section 18 of the act requires the magistrate courts to be located at the county seat and authorizes the County Court in counties of the First Class which have more than one magistrate district to determine the situs or location of such courts within the County. The Section also provides that the County Court may, by proper order, provide additional places in the County for the holding of magistrate court.

"It is our view, having in mind the legislative history relating to these minor tribunals, that the establishment and maintenance of these courts is the obligation of the State. The State receives

the fees collected and I am inclined to the conclusion that it was the intention of the Legislature to require the State to assume the corresponding burden of establishing and maintaining them. By interpretation, this court should not be saddled upon the counties.

"The question involved concerns all the counties of the State and it is, therefore, desirable that it be determined by the Attorney-General's office."

This section is the only provision of the law relating to magistrates which makes any reference to establishing and maintaining magistrate courts. The act requires that the salaries of the magistrates be paid out of the state treasury except in cases of additional magistrates, and it also requires that the fees of the magistrates, whose salaries are paid out of the state treasury, be paid to the Director of Revenue. The act also provides that fees paid to magistrates, whose salaries are paid out of county revenue, shall be turned into the county treasury. Section 24 of Article 5 of the Constitution of 1945 makes the same provision.

Apparently the lawmakers concluded that if the compensation of magistrates is to come out of the state revenue that the fees accruing to those officers should be paid into the state treasury. This policy is in line with the laws relating to county officers who are paid salaries and who are required to pay their fees into the county treasury. In those cases in which the county officers, such as circuit clerks, county clerks, recorders, prosecuting attorneys, etc., are paid a salary out of county revenue and where they turn their fees into the county treasury, the burden seems to have been imposed upon the counties to maintain such officers, regardless of whether or not the fees collected by the officers are sufficient to pay the salary of the officer.

In considering this question, the following rule of statutory construction would be applicable:

"All parts of a statute must, if possible, be given meaning and effect to ascertain and give effect to the legislative intention. Ex parte Andrews 18 S.W. (2d) 580."

Applying this rule here, if no provision has been made for the establishment and maintenance of magistrates' offices, then the Senate Bill 207, supra, would be meaningless and inoperative. While the Senate Bill does not in plain words specify who shall establish and maintain the offices of the magistrates, still it is our duty to search through the bill and other statutes and find some language or provision whereby that duty is expressly or impliedly imposed on either the state, the county or the magistrate. This is necessary in order to give the act some meaning and so that it will be in force and effect.

The burden of establishing and maintaining the magistrates' offices could fall on either of the three following agencies: (a) the magistrate, (b) the county, (c) the state. In the early period of this state, we find some cases in which the officers who were on a fee basis and where no provision for the establishment and maintenance of their offices was provided by statute, then the burden fell on the county. The case of County of Boone vs. Todd, 3 Mo. 140, was one of the earliest cases in which the court had before it such a question. The law, applicable to circuit clerks at that time, provided that the clerk procure a seal, purporting to be the seal of the court of which he is clerk, with such emblems, etc., and a screw and other necessary apparatus for impressing the same, and shall provide and safely keep and preserve suitable books, furniture and other necessaries for their respective offices, and keep regular and faithful accounts thereof. In that case, the clerk's bill for rental of an office had been presented to the county court, who refused to pay same. In speaking of the duties of the county court and respect to furnishing county offices, the court, at l. c. 143, said:

* * * * With regard to the counties, the law requires that they should have land, a public square at least, on which a court house, jail and public offices are to be built. The offices to be built as soon as the condition of the county funds will admit of it. It is made the duty of the County Court, therefore, to provide houses for the public offices belonging to the counties, and until this is done, the county has no right to throw this burthen on the clerk; but should pay rent unless some equivalent is given to the clerk for the use of his house. * * *

In the case of Ewing vs. Vernon County, 216 Mo. 681, and in the case of Harkreader vs. Vernon County, 216 Mo. 696, we

find the questions similar to the one here under consideration were before the Supreme Court. In those cases, county officers had incurred expenses in the maintenance of their offices and the County of Vernon was billed for these expenses. There was no statutory provision wherein the duty was imposed upon the county to pay for such expenditures. In the Ewing case, the bill which was presented to the county court for payment was for janitor service in the recorder's office. In the Hartreeder case, the bill presented to the county court for payment was for janitor service in the sheriff's office. In both of these cases, the court held that the county was liable for these expenditures even though there was no provision in the statute obligating the county to pay them. The opinions in the two Vernon county cases cite a number of cases which have been before the Missouri Supreme Court and all of them hold to the effect that the expenses of maintaining and operating an office should be borne by the county in which the office is located. In the case of Rinehart vs. Howell County, 153 S.W. (2d) 381, which was before the Missouri Supreme Court in 1941, it was held that stenographic expenses of the prosecuting attorney which were necessary were recoverable against the county even though there was no statute authorizing the prosecuting attorney to employ a stenographer.

These cases, we think, clearly establish the rule that the expense of maintaining and operating an office may not be imposed upon an officer.

The next question is, are these expenses of establishing and operating the magistrate offices imposed on the state as stated above. There is no provision in the law whereby it can be ascertained that the lawmakers have expressly or impliedly imposed the duty on the state to pay for them. From an examination of the appropriation bills, we find that no appropriation was made by the 63rd General Assembly to meet such expenditures. Therefore, we do not think there is any authority to impose this obligation on the state.

Since these expenses may not be imposed upon the officer, and since the law makes no provision for them to be imposed upon the state, we go into the question of whether or not they may be imposed upon the counties. Section 18 of the Act provides that "the county seat shall be the seat of the magistrate court, and the county court may, by proper order, provide an additional place or places in the count for the holding of magistrate court." If this expense is imposed upon the counties, the cost of the establishment of the offices would be very little in counties having a population of 50,000 or less, because the probate judge in those counties is the magistrate and the office

of the probate judge could be used as the magistrate's office. Counties with a population of 30,000 or less includes all of the third and fourth class counties in the state except 14 of such classified counties.

The term "county seat" is defined in Words and Phrases, Permanent Edition, Vol. 10, page 118.

"'County seat,' as used in the various territorial acts of Michigan, meant the place designated for doing the county business--a place at which the public buildings were to be erected, where the probate and county courts were to be held and the county offices located, and where the board of supervisors were to hold their sessions. The county seat did not necessarily mean the same thing as 'seat of justice,' or the place of the holding of the circuit court."

The word "procure" is defined in Words and Phrases, Permanent Edition, Vol. 54, page 668, as to mean "to procure beforehand or to furnish," *Hoffman vs. Martin et al.*, 119 S.W. (2d) 1027.

The language, whereby it is provided that the county court may provide an additional place for magistrate court, lends support to the thought that the lawmakers intended that the county court would furnish the place or places for the holding of magistrate courts. Section 15702 R.S. No. 1939, as repealed and re-enacted in House Bill 758 of the 63rd General Assembly, provides that the county court in each county shall erect and maintain at the established seat of justice a room and sufficient courthouse, jail and necessary fire-proof buildings for the preservation of the records of the county.

The foregoing references, statutes and reasonings lead us to the conclusion that since no provision has been made whereby the duty of establishing and maintaining magistrate's offices has been imposed upon the state or upon the magistrate, and since there is some indication from the magistrate's Act that it was the intention of the General Assembly to impose this duty on the counties, it therefore follows that the duty of establishing and maintaining the office is upon the county courts of the respective counties.

Hon. Erwin F. Vetter

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CONCLUSION

Therefore, it is the opinion of this department that it is the duty of county courts to establish and maintain out of the county funds the offices of the magistrate courts in their respective counties.

Respectfully submitted,

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APPROVED:

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