

CONSTABLES: Deputy constables in St. Louis County must be approved by a majority of the Circuit Judges and are not entitled to fees but are paid a salary.

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November 9, 1939

11-16

Hon. Stanley Wallach  
Prosecuting Attorney  
St. Louis County  
Clayton, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of November 3, 1939, which reads in part as follows:

"This office desires an opinion as to the constitutionality, and effect, of an act passed at the last Session of the General Assembly, relating to salaries and fees of Constables and their deputies in counties of not less than 200,000, and not more than 400,000 inhabitants, found on page 683 of the Laws of Missouri, 1939.

"Since the enactment of this law, several questions have arisen which require an interpretation of the Act and it's relation to other statutes. \* \* "

1

Your first inquiry reads as follows:

"Is the law relative to the appointment of deputy constables constitutional?

The title to the Act repealing and re-enacting Section 11777 R. S. Mo., 1929, appearing in Session Laws of 1939, page 683, reads as follows:

"AN ACT to repeal Section 11777, Revised Statutes

of Missouri, 1929, relating to the fees of constables and to re-enact a new section in lieu thereof relating to the same subject matter and providing for the collection of fees by constables and the disposition thereof, the payment of salaries to constables and their deputies in counties which now have or which may hereafter have not less than 200,000 and not more than 400,000 inhabitants; declaring this to be a Revision Bill with an emergency clause."

After reading the title of the Act, it appears the intention and purpose of the legislature was to place constables and deputy constables of counties containing not less than 200,000 and not more than 400,000 inhabitants on a salary basis and that all fees should be paid into the county treasurer. Even if the classification by population only applies to St. Louis County alone it has been held that it is not special or class legislation. *Thomas v. Buchanan County*, 51 S. W. 2d 95, 330 Mo. 627. In that case at paragraph 9, the court said:

"The next point made by certain of the respondents is that the law is local and special in violation of subdivisions 2, 15, and 32 of section 53, article 4, of the Constitution, in that it singles out Buchanan county and attempts to regulate its affairs, creates a special board of estimate, and makes the county court a purchasing agent. It is true the only county in the state which, at this time, has a population between 95,000 and 150,000, is Buchanan county. But this does not make the law local, because the act applies as well to all counties which may hereafter have that population. In other words, the class is fixed, but the counties that fall within it may change as their population fluctuates. That such legislation is not local is established by numerous decisions of this court: *Davis v. Jasper County*, 318 Mo. 248, 253, 300 S. W. 493, 495; *State ex rel. Moseley v. Lee*, 319 Mo. 976, 993, 5 S. W. (2d) 83, 90."

Since the purpose was to place the constable and his deputies on a salary basis the Act contained the power of appointment of the deputies under the approval as to numbers and salary by a majority of the judges of the Circuit Court

of that county. All of the procedure set out in Section 11777, as re-enacted was a part of the plan to place the constable and his deputies on a salary basis. It is true the title to the Act does not mention the appointment and approval of the deputies, yet it is a part of the purpose of the act and is germane to the subject matter contained in the Act.

In the case of *State v. Terte*, 23 S. W. (2d) 120, par. 1, 324 Mo. 402, the court said:

"On the other hand, we resolve the doubt, if any, in favor of validity, if the challenged legislation is germane and relates either directly or indirectly to the main subject. *State v. Miller*, 45 Mo. 496; *State ex rel. v. Mead*, 71 Mo. 266; *De Both v. Coal & Mining Co.*, 141 Mo. 497, loc. cit. 503, 42 S. W. 1081; *St. Louis v. Tiefel*, 42 Mo. 578; *State ex rel. v. Slover*, 134 Mo. 10, 31 S. W. 1054, 34 S. W. 1102; *State ex inf. v. Firemen's Fund Ins. Co.*, 152 Mo. 1, loc. cit. 45, 52 S. W. 595, 45 L. R. A. 363; *State v. Doerring*, 194 Mo. 398, loc. cit. 347, 92 S. W. 489; *O'Connor v. Transit Co.*, 198 Mo. 622, loc. cit. 633, 97 S. W. 150, 115 Am. St. Rep. 495, 8 Ann. Cas. 703; *State v. Smith*, 233 Mo. 242, loc. cit. 255, 135 S. W. 465, 33 L. R. A. (N. S.) 179; *State v. Brodnax et al.*, 228 Mo. 25, loc. cit. 53, 128 S. W. 177, 137 Am. St. Rep. 613; *State v. Peyton*, 234 Mo. 517, loc. cit. 524, 137 S. W. 979, Ann. Cas. 1912D, 154; *St. Louis v. Liesing*, 190 Mo. 464, loc. cit. 489, 89 S. W. 611, 1 L. R. A. (N. S.) 918, 109 Am. St. Rep. 774, 4 Ann. Cas. 112; *Cunningham v. Railroad (Mo. Sup.)* 215 S. W. 5, loc. cit. 9; *Nalley v. Ins. Co.*, 250 Mo. 452, loc. cit. 467, 157 S. W. 769, Ann. Cas. 1915A, 283.

"In *Ewing v. Hoblitzelle*, 85 Mo. 64, we said: 'Where all the provisions of a statute fairly relate to the same subject, have a natural connection with it, are the incidents or means of accomplishing it, then the subject is single, and if it is sufficiently expressed in the title the statute is valid.' In *State ex rel. v. Miller*, 100 Mo. loc. cit. 445, 13 S. W. 677, 678, Black, J., said: 'In adopting a title, the Legislature may select its own language, and may use few or many words. It is sufficient that the title fairly embraces the subject-matter covered by the act; mere matters of detail need not be stated in the title.'"

Also, in the case of Massey-Harris Harvester Co. v. Federal Reserve Bank, 104 S. W. (2d) 385, par. 6-8, 340 Mo. 1133, 111 A. L. R. 133, the court said:

"Plaintiff says that 'the subject of the legislation is "Promissory notes and checks" and not "banks and banking"; and that 'there is nothing in the title to indicate the liability of banks is to be regulated, or that banks are to be authorized to accept anything but money in payment of such instruments, or that they might send such instruments direct to the debtor for collection'; but that this act 'after providing that the instruments described in the title may be sent for collection direct to banks on which they are drawn or at which they are payable, then proceeds to add another subject, namely, the liability of the forwarding bank.' This is to narrow a construction of the title. The reasonable construction of the subject stated in the title is: 'Collection by banks or trust companies of checks, notes or other negotiable instruments drawn upon other banks located at a different place'; and the purpose is clearly stated to authorize banks or trust companies to make collection of such instruments from banks upon which they are drawn by forwarding them direct to such banks. While the word 'collection' is not used in the title, certainly the only reasonable construction is that it means 'forwarding' for collection, because that is the usual and commonly known purpose for which banks are 'forwarding' such instruments to other banks. The legal effect of the method authorized is so closely related to prescribing the method as to be practically part of it. Our rule of construction of this section of the Constitution is that if 'every provision of the act fairly relates to, and has a natural connection with, the subject expressed in the title \* \* \* it is unimportant "that some provisions of the act are not specifically named in the title, or that, by refinement of terminology, the minutiae of the act itself can be separately catalogued"' Graves v. Purcell, 337 Mo. 574, 85 S. W. (2d) 543, 550. \* \* \* "

It is very noticeable in the Act that where the classifi-

cation sets out the population of not less than 200,000 and not more than 400,000 inhabitants it is preceded by the phrase "which now has or may hereafter have."

It is not the policy of this department to pass upon the constitutionality of statutes enacted by the legislature, for the reason that that opinion solely rests with the Supreme Court of the State of Missouri, but, in reading the title to this Act, and reviewing the authorities above set out, it appears that the title contains enough information to allow the legislature to set out the method of the appointment of the deputy constables, for the reason that it pertains to salary, which is the main purpose of the Act itself.

It also appears that the Act itself is not class legislation under the authorities above set out, even though it does apply only to St. Louis County, for the reason that the Act specifically states "which now has or may hereafter have."

## II

Your second inquiry reads as follows:

"Can the constable appoint deputies other than those provided by re-enacted Section 11,777, page 683, Laws, 1939?"

Section 11777, Laws of Missouri, 1939, page 683, is practically the same as Section 11777 R. S. Missouri, 1929, except that it provides for the payment of a salary of the constable and his deputies and not compensation by way of fees. The other additional part of Section 11777, as re-enacted, provides as follows:

" \* \* \* In lieu of all fees such constables shall receive a salary not to exceed \$2,700.00 per annum, payable pro rata at the end of each month out of the Treasury of said County and each Deputy Constable as shall be approved by a majority of the judges of the circuit court shall be paid a salary not to Exceed \$125.00 per month, the amount of compensation of the Constables and Deputy Constables shall be fixed by a



majority of the judges of the circuit court within the limits herein before set forth. Provided However, No constable shall appoint any deputy constable as in this act provided except upon the approval of the majority of the judges of the Circuit Court who shall not approve the appointment of more than twenty-eight (28) deputy constables, and provided further that a majority of the judges of the Circuit Court shall approve at least two (2) deputies for each constable; and provided further that for extraordinary emergencies the Circuit Court may approve, subject to the provisions of this act the temporary appointments of such additional deputy constables as may be deemed necessary in the judgment of the majority of the court to meet said emergencies."

It will be noticed that Section 11777, as set out in 1939 Session Laws, refers to the phrase "in this act provided", meaning the act that places a constable or deputy constable on a salary basis. This Act is the re-enactment of Section 11777 as contained in Article 2, Chapter 84, of the Revised Statutes of Missouri, 1929. This Act applies to only counties as "in this act provided" which means in counties of not less than 200,000 nor more than 400,000. It will also be noticed that immediately after setting out the classification of not less than 200,000 and not more than 400,000. The act proceeds to read as follows:

"  
\* \* \* the Constables in such counties shall collect the fees authorized by law for their services, and shall at the end of each month file with the county clerk a report of all fees which they collected during said month, stating on what account or in what case such fees were charged and collected, together with the names of the persons paying or who are liable for same, which said report shall be verified by the affidavit of said constable. It shall be the duty of the constable upon the filing of the said report to forthwith pay over to the County Treasurer of such county all moneys collected by said constable or his deputies, \* \* \* ."

The above language of Section 11777 as re-enacted is very

plain and unambiguous, and it becomes the duty of the constable or deputy constables, and it is mandatory that they collect the fees and make their report to the county clerk and pay the same over to the county treasurer.

Section 11754, appears in Article 1, Chapter 82, R. S. Missouri, 1929, and reads as follows:

"Every constable may appoint deputies who shall possess the same qualifications as the constable, who shall take the same oath of office and for whose conduct he shall be answerable, which appointment and oath shall be filed in the office of the clerk of the county court; said deputy or deputies, so appointed, shall devote his time to the duties of such office, provided, no such deputy or deputies shall be appointed who is or may be directly or indirectly connected with or engaged in the mercantile business, or a member of any firm engaged in such business, or a member of or connected with any collection agency, credit house, installment house or loan agency where money or moneys are sought to be collected by suit; and any service of writ, process or execution in any court by such pretended deputy shall be void."

This is the general section referring to all constables, and sets out the manner of their appointment, and the qualification; but, under Section 11777, as re-enacted, an exception is made to Section 11754, supra, in that the county of St. Louis coming within the classification of not less than 200,000, and not more than 400,000 inhabitants, the deputy constable may be appointed by the constable, but the appointment must be approved by a majority of the judges of the Circuit Court of St. Louis County.

Section 11777, as re-enacted, does not repeal the general law as to the appointment of deputies as set out in 11754, supra, and it was not the intention to repeal that section or it would have been mentioned in the repealing section of the re-enactment Act of 11777.

In conclusion, will say, that it is the opinion of this department that a constable elected in any township in the county of St. Louis can only appoint deputies in accordance with Section 11777, page 683, Laws of Missouri, 1939.

III

Your third inquiry reads as follows:

"Do the constables of St. Louis County have the authority to appoint deputies under Section 11,754 R. S. 1929?"

In view of our opinion in your second question, it is the opinion of this department that the constables of St. Louis county do not have authority to appoint deputies under Section 11754 R. S. Missouri, 1929.

It is further the opinion of this department that inasmuch as Section 11754, supra, is not repealed by Section 11777, as re-enacted, but is only repealed so far as the re-enactment conflicts with the general law. The original general act 11754, R. S. Missouri, 1929, still is in effect as far as the qualifications of the deputy constables appointed under section 11777 as re-enacted.

IV

Your fourth inquiry reads as follows:

"Does the provision in re-enacted Section 11,777 limit the number of deputies to 28 for the Township, or for the County?"

That part of Section 11777, as re-enacted in 1939, which affects your fourth question reads as follows:

"Provided However, No constable shall appoint any deputy constable as in this act provided except upon the approval of the majority of the judges of the Circuit Court who shall not approve the appointment of more than twenty-eight (28) deputy constables, and provided further that a majority of the judges of the Circuit Court shall approve at least two (2) deputies for each constable; \* \* \* ."



It will be noticed by this part of Section 11777, as re-enacted, that the constable cannot, under any circumstances, appoint any deputy constable, except upon the approval of the majority of the judges of the Circuit Court. It says specifically "any deputy constable as in this act provided." The wording of this Act is plain and unambiguous, in that it is mandatory for constables in counties within this classification to appoint deputy constables with the approval of the judges of the Circuit Court, as set out in the Act, and he cannot appoint deputies in any other manner. All of this coming under the clause "as in this act provided." It will also be noticed by that part of the Act hereinabove set out, that the judges of the Circuit Court cannot approve the appointment of more than twenty-eight deputy constables. The judges of the Circuit Court are bound by that limitation and are not specifically limited to any township, but the limitation is set concerning the appointment of not more than twenty-eight deputy constables. It does not say "not more than twenty-eight deputy constables in any township", and in reading the next following provision it is mandatory upon the judges of the Circuit Court to approve at least two deputies for each constable. By setting out that the Circuit Court cannot approve more than twenty-eight deputy constables, and thereafter setting out that it shall be the duty of the Circuit Court to approve at least two deputies for each constable, it clearly shows that the limitation of twenty-eight deputy constables applies to the whole county and the mandatory amount of two deputy constables for each constable applies to each township. It is very noticeable that where the Circuit Court is limited to the approval of not more than twenty-eight deputy constables, it does not say "for each constable."

In view of the above sections specifically pointed out it is the opinion of this department that the re-enactment section 11777 limits the number of deputies to twenty-eight for the county, and also compels the Circuit Court to approve at least two deputies for each constable.

V

Your fifth inquiry reads as follows:

"Section 3837 provides that when an officer is

a witness in a trial, or before a coroner, or grand jury, more than five miles from his residence, he may receive a fee as a witness, what disposition must be made of the witness fees allowed to constables and their deputies in St. Louis County? Must those fees be turned into the treasury under Section 11,777, or are witness fees the personal property of the constable or his deputies as the case may be?"

Section 3837, Session Laws of Missouri, 1939, page 357, partially reads as follows:

"Provided, that the provisions of this section shall not apply to any officer who is a witness in any case where the residence of such officer is five miles from the place where the trial or coroner's inquest is held, or where the grand jury is in session."

Section 3837, R. S. Missouri 1929, was partially construed in the case of State ex rel. v. Kimmel, 256 Mo. 611, l. c. 627, where the court said:

"Section 5388, Revised Statutes 1909, is reproduced in part in the return. That part of it not reproduced prescribes that no officer, appointee or employee holding a state, county, township or municipal office, including police officers and policemen elected or appointed, shall receive any fee or compensation as a witness for testifying before a coroner's inquest, grand jury or in any criminal case. It goes on to provide that such persons shall be compelled to attend the trial of all criminal cases, inquests and grand juries when legally subpoenaed, barring from its provisions officers who reside five miles from the place where the trial or inquest is held or where the grand jury is in session. \* \* \* \* \*

It can be plainly seen by the above holding that the court recognized that where an officer, either of the state, county, township or municipal office, was compelled to render service in his official capacity, this section forbids the

officer from receiving any fee or compensation before certain tribunals. The section also had the proviso, as above set out, which recognized the fact that where an officer was acting as a witness in certain tribunals more than five miles from his place of residence it was not part of his official duties and he should be allowed to claim witness fees and accept the same. This section is not conflicting with that part of Section 11777, Laws of Missouri, 1939, page 683, where it states that all fees should be turned into the county treasury. That part of the section merely means official fees and not fees earned in the officer's official capacity. The Legislature has recognized that fees earned in an officer's official capacity, but not part of his official duty, should be claimed and retained by that official in his own right. In the case of clerks of the circuit court under Section 11786, under the Session Laws of Missouri, 1933, page 369, the Legislature recognized that clerks of the circuit court elected in that circuit should be entitled for their own use all fees earned by them in cases of change of venue coming from other counties, the distinction being that the officer, or as in this case the constable or deputy constable, is performing a duty not included as his official duty. The same theory may be had on justices of the peace who are allowed to retain fees earned by them in performing marriage ceremonies which is not part of their official duty.

#### CONCLUSION.

In view of the foregoing authorities it is the opinion of this department that under Section 3837, Session Laws of Missouri, 1939, page 357, that a constable, or his deputy, is entitled to the fees personally when he is a witness in a trial or before a coroner or grand jury more than five miles from his place of residence and that the fees he so receives are not to be turned into the county treasury as provided under Section 11777, page 683, Session Laws of Missouri, 1939.

#### VI.

Your sixth inquiry reads as follows:

"Does the provision in Section 11,791 R. S. 1929 providing a fee of \$1.00 'for every trial in a

criminal case, or confession' apply to constables in connection with his attendance during the trial of a criminal case, and must that fee be turned into the treasury? If allowable, our thought is that it must be."

In answer to this inquiry I am enclosing a copy of an opinion rendered by this office on April 11, 1934, to the Honorable George B. Padget, Prosecuting Attorney, Daviess County, Gallatin, Missouri, which holds that a constable is entitled to a fee of One Dollar (\$1.00) for every trial in a criminal case or confession in the justice court wherein he is the attending officer in the court. By being the attending officer in the court, it is part of his official duties and is not a fee to be allowed to the officer personally but must be turned into the office of the county treasury in compliance with that part of Section 11777, page 683, Laws of Missouri, 1939, which partially reads as follows:

"\* \* \* \* \* In lieu of all fees such constables shall receive a salary not to exceed \$2,700.00 per annum, payable pro rata at the end of each month out of the Treasury of said County \* \* \* "

And further said section provides that the constables shall collect the fees authorized by law for their services and shall, at the end of each month, pay the same into the office of the county treasury and shall receive a salary in lieu of all fees.

CONCLUSION.

In view of the foregoing authorities it is the opinion of this department that a constable is entitled to claim a fee of One Dollar (\$1.00) for every trial in a criminal case for a confession in the justice court wherein he is the attending officer in the court, but that said fee, which is in payment of an official duty, should be paid into the office of the county treasurer at the end of each month.

Respectfully submitted,

APPROVED:

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TYRE W. BURTON  
(Acting) Attorney-General