

SHERIFF:) County Counselor of St. Louis County is sole
COUNTIES:) attorney for sheriff.

(25)

October 18, 1941

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Mr. Arnold J. Willmann
Sheriff
St. Louis County
Clayton, Missouri

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Dear Sir:

This Department is in receipt of your request for an official opinion, which reads as follows:

"I am writing requesting your opinion as to whether or not it is mandatory upon me to accept the services of the County Counselor as my attorney, under the provisions of House Bill 143, passed during the last session of the Legislature and which was recently signed by the Governor.

"For your information, I took office on January 1, 1941, and appointed an attorney under the provisions of Section 8a, Laws of Missouri, 1939. The salary of my Attorney was fixed by the County Court at \$100.00 per month."

From your request we gather that your attorney was appointed under authority of an act passed by the Sixtieth General Assembly which dealt with officers in counties of from 200,000 to 400,000 inhabitants (Laws of Missouri, 1939, page 679). Section 8a of that act provides as follows:

"* * * The sheriff shall be entitled to employ an attorney to represent him in his official capacity, which said employment shall be approved by the county court. Said attorney shall receive an annual salary of not to exceed \$2000.00 per year, as may be fixed by the county court, which salary shall be in full for all services rendered the sheriff and in lieu of any fees, commissions and charges fixed by law."

However, the 1941 Legislature amended Section 12993, R. S. Mo. 1939, by adding two new sections, designated 12993a and 12993b, which sections read as follows (Laws of Missouri, 1941, page 318):

"Section 12993a. Provided that in all counties which now have, or may hereafter have not less than 200,000 and not more than 400,000 inhabitants, a County Counselor shall be appointed by the County Court who shall hold his office for a term of four years and until his successor is appointed, commissioned and qualified and who shall devote his entire time to said office. In addition to the duties as prescribed by Section 12991 of the Revised Statutes of Missouri 1939, it shall be the duty of the County Counselor to commence, prosecute or defend, as the case may require, all civil suits or actions in which any county officer or commission is a party in his or its official capacity, and when requested, shall give his opinion to any county officer, including any planning or zoning commission established by law, upon any question of law relative to their respective offices or the discharge of their duties; and he shall be required to

appear in behalf of the county and prosecute or defend, as the case may require, all appeals, writs of error or any proceeding to which the county may be a party, or any county officer or commission is a party in his or its official capacity, in any of the appellate courts of this State; and shall give his opinion to the board of equalization of such county on any question of law that may arise in their deliberations."

"Section 12993b. The term of the office of County Counselor as herein provided shall begin immediately upon the going into effect of this article, and shall continue until the first day of January, 1945, and until a successor is duly appointed, and thereafter a successor shall be appointed who shall hold his office for a term of four years; and he shall receive a salary of \$6,500 per year, payable pro rata, monthly, out of the County Treasury by warrant issued by the County Court; and he shall be authorized to appoint two assistants who shall be paid monthly as compensation for their services the following sums, to wit: to the first assistant, \$300 per month, and to the second assistant, the sum of \$250 per month, one of whom shall attend each sitting of the County Court and give his advice on all legal questions that may arise; and it shall be the duty of the County Court to provide adequate office accommodations and facilities necessary to carry on and perform the duties and functions of said office, including an adequate law library; and the said County Counselor

with the approval of County Court is authorized to employ such stenographic assistance as may be necessary in the discharge of his official duties. No more than two stenographers shall be employed who shall each receive as compensation no more than one hundred dollars per month. Such assistants and employees shall hold their positions at the pleasure of the County Counselor, and be paid monthly by the County Court out of the County Treasury. After the passage of this Act, the county court shall not appropriate any sums for legal services in behalf of any elected county officer, except, however, for such legal services as are provided by law for the collector of such county for the collection of delinquent taxes. Any County Counselor heretofore appointed and acting under the provisions of this Article, and now subject to the provisions of this Act, shall continue in office until the expiration of his commission and until his successor is duly appointed and qualified under the provisions of this Act on the first day of January, 1945, and he shall receive such additional compensation for his services and such assistants as provided for herein by reason of the new and additional duties enjoined upon him by virtue of said office."

From a reading of the above statutes it will be seen that the County Counselor of St. Louis County is now required to discharge all the duties theretofore performed by the Attorney for the Sheriff and the act specifically states that the county court shall not appropriate any sums for legal services in behalf of any elected county officer, except for legal services for the collector.

We believe that this act does away with and abolishes the attorney for the sheriff as provided for in Section 8a, Laws of Missouri, 1939, page 679, supra. While an attorney for a sheriff is not a public officer (State ex rel. Pickett v. Truman, 64 S. W. (2d) 105, 333 Mo. 1018), still the rule in regard to the right of a legislature to abolish an office is equally applicable to an employee. Mansfield v. Chambers, 26 Cal. App. 499, 147 Pac. 595. The rule in Missouri is well settled that the legislature which possesses the power to create an office, has the power to abolish the office. In State ex rel. Tolerton v. Gordon, 236 Mo. 142, this is succinctly stated as follows:

"Neither is there any doubt as to its (legislature's) power to abolish any office not provided for by the Constitution."

In the early case of State ex rel. Attorney-General v. Davis, 44 Mo. 129, it is said (l. c. 131):

"A mere legislative office is always subject to be controlled, modified, or repealed by the body creating it. In England, offices are considered incorporeal hereditaments, grantable by the crown, and a subject of vested or private interests. Not so in the American States; they are not held by grant or contract, nor has any person a private property or vested interest in them, and they are therefore liable to such modifications and changes as the law-making power may deem it advisable to enact."

Therefore, we are of the opinion that the Legislature has abolished the employment of attorney for the Sheriff of St. Louis County and that under Sections 12993a and 12993b, Laws of Missouri, 1941, page 318, the Sheriff of St. Louis County is required to look to the County Counselor for legal advice and representation.

Oct. 18, 1941

Conclusion

It is, therefore, the opinion of this Department that Sections 12993a and 12993b, Laws of Missouri, 1941, page 318, which provide that the County Counselor of counties of from 200,000 to 400,000 inhabitants shall be the sole legal representative of the county officers, superseded and repealed Section 8a, Laws of Missouri, 1939, page 679, which provided that the Sheriff of such counties could appoint an attorney, and that the Sheriff must now look to the County Counselor for legal advice and representation.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

VANE C. THURLO
(Acting) Attorney-General

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