

PROSECUTING ATTORNEY: May maintain the office anywhere.

April 27, 1943



Honorable A. L. Wright  
Prosecuting Attorney  
Stone County  
Galena, Missouri

Dear Sir:

We are in receipt of your opinion request dated April 19, 1943, which reads:

"I would appreciate your opinion on the following:

"Before election to this office I had for several years practice law at Crane in this county and still maintain an office there and reside there. Crane is in the north end of the county and due to geography and the road system those people in the north half of the county who wish to see me would have to come through Crane to get to Galena. More than half of the people live in the north end of the county. In order to save miles to those who wish to see me, which just now are precious, I have announced that I will be in Galena on Mondays, Wednesdays and Fridays and the other days at my office in Crane. I have arrangements with the Sheriff to call me at any time I am needed and if needed in Galena on the days I should be in the Crane office I answer his call.

"It has been my opinion that under the statute I did not have to maintain an

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office at all in the court house unless I wanted to do so. The statute does not say so. Am I in your opinion failing to take care of the duties of my office because I am not keeping my office in Galena everyday, but attending to duties as above stated."

In answer to your question this office must advise you that we have been unable to find any authority which requires a prosecuting attorney to maintain the office of prosecuting attorney at any particular place. It has been the general practice of prosecuting attorneys in small counties to maintain a private office at the place of his residence at the same time that he served as prosecuting attorney. The only requirement of a prosecuting attorney is that he devote his personal attention to the duties of the office. Section 18, Article II, Constitution of Missouri provides:

"That no person elected or appointed to any office or employment of trust or profit under the laws of this State, or any ordinance of any municipality in this State, shall hold such office without personally devoting his time to the performance of the duties to the same belonging."

Also, discussing the general duties of an officer of the State is Section 12942, R. S. Missouri 1939. Neither the Constitution nor the statutes indicate where a prosecuting attorney must maintain that office. The criterion, apparently, is whether or not he is devoting enough personal attention to the office to fulfill the duties thereof.

Section 12927, R. S. Missouri 1939, provides that a prosecuting attorney devote his entire time to the duties of the office in cities of more than 100,000 population. It might be argued from this that since the legislature expressly ruled on the amount of time a prosecuting attorney should devote to the duties of prosecuting attorney in cities of one size, the legislature must have realized that in cities (or counties) of lesser population the office of prosecuting attorney did not require the attorneys' full time.

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Therefore, in smaller cities (or counties) the prosecuting attorney could devote the amount of time necessary to discharge the duties of the office, and need not devote his entire time to the office if such effort was not required. If that is true it does not seem to be inconsistent that he may maintain two offices, the office of prosecuting attorney and his own office. Needless to say, the office of prosecuting attorney is the primary office, and the duties of that office should never be subordinated to the attorney's private office.

#### CONCLUSION

A prosecuting attorney may maintain the office of prosecuting attorney at the county seat or elsewhere and a private office at the place of his residence, even if in different parts of the county, as long as the duties of the office of prosecuting attorney are considered as primary duties and receive enough of the office holder's time and attention to discharge the duties of the office of prosecuting attorney effectively.

Respectfully submitted

WILLIAM C. BLAIR  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General of Missouri

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