

MAGISTRATE COURTS: Division No. 2 of the Magistrate Court of Nodaway County is a legally constituted court.



March 10, 1948

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Honorable Emmett L. Bartram
Prosecuting Attorney
Nodaway County
Maryville, Missouri

Dear Mr. Bartram:

This is in reply to your letter of recent date requesting the opinion of this department regarding the legal status of Division No. 2 of the Magistrate Court of Nodaway County, Missouri.

On November 18, 1946, a number of qualified voters of Nodaway County filed a petition in the Circuit Court of that county in accordance with provisions of Section 1 of an act of the 63rd General Assembly, Laws of Missouri, 1945, page 765, relating to magistrates, praying that the number of magistrates in Nodaway County be increased to one in addition to the probate judge. The record discloses that said petition was taken up by the court and found to be sufficient in form and substance. Publication in the manner prescribed by law was ordered, giving thirty days public notice preceding the hearing on said petition. The record discloses that on December 23, 1946, the petitioners filed the affidavit of publication.

The record further discloses that on December 31, 1946, a hearing was held on said petition, at which time it was adjudged and decreed by the court that the number of magistrates in Nodaway County be increased to one in addition to the probate judge. The decree of the court is as follows:

"Now on this 31st day of December, 1946, the same being a regular day of the Circuit Court within and for Nodaway County, Missouri, and a petition having been filed alleging that the needs of justice require an additional magistrate in addition to the Probate Judge in said county and state and

praying that the number of magistrates in said County of Nodaway and State of Missouri be increased from one to two, the court finds that said petition bears the signatures of a large number of taxpaying citizens and voters within and for said Nodaway County, Missouri and is in order and satisfies all legal and constitutional requirements as to form and substance, and the court further finding that notice of said hearing on said petition has been given and published according to law; and this petition coming on for public hearing, evidence is heard, and the court, being fully advised of all the premises herein, after due deliberation and consideration finds that facts and allegations in said petition are true, and that according to the needs of justice in said County of Nodaway and State of Missouri one magistrate in addition to the Probate Judge in said County of Nodaway and State of Missouri should be provided for.

"Now therefore, it is by the court considered, adjudged and decreed that the number of magistrates in said county of Nodaway and State of Missouri be and hereby is increased one in addition to the Probate Court of Nodaway County, Missouri, and that said additional magistrate be appointed by the Governor."

In accordance with the judgment of the Circuit Court of Nodaway County the Governor of Missouri, on January 13, 1947, duly appointed and commissioned Honorable Raymond Eckles as Magistrate within and for Nodaway County. The said Raymond Eckles having qualified as Judge of Division No. 2 of the Magistrate Court of Nodaway County is at the present time serving in that official capacity.

The question presented concerns the sufficiency of the petition with regard to the number of signatures appearing thereon. It is required by Section 1, Laws of Missouri, 1945, page 765, that five hundred qualified voters of the county petition the court in such matter. The record discloses that two petitions were filed bearing a total of only seventy-one signatures. However, we have been reliably informed that there

were filed in the Circuit Court of Nodaway County on November 18, 1946, petitions identical with those appearing of record bearing the signatures of more than five hundred qualified voters of Nodaway County, but that such petitions, except only those bearing the signatures of seventy-one voters, have for some unexplained reason disappeared from the files of the clerk of the said circuit court.

The statute requires that action be brought "on petition of five hundred qualified voters of the county." A court must proceed in a pending cause according to the course prescribed by law, in that the petition before it must be one, in the first instance, sufficient to initiate the exercise of its jurisdiction. The court in its decree stated that "said petition bears the signatures of a large number of taxpaying citizens and voters within and for said Nodaway County, Missouri, and is in order and satisfies all legal and constitutional requirements as to form and substance, * * *." We believe the court would not have taken jurisdiction of this action had the petition not satisfied all legal and constitutional requirements. The law presumes the reasonable and proper performance by an officer of the duties pertaining to his office. State ex rel. and to the Use of City of St. Louis v. Priest, Clerk of the Circuit Court, et al., Mo. Sup., 152 S.W. (2d) 109, l.c. 112. It is well settled that any affirmative act on the part of the court implies that all facts necessary to give the court jurisdiction to render a particular judgment were duly found and that every step necessary to give jurisdiction has been taken. Ray v. Ray, 330 Mo. 530, 50 S.W. (2d) 142, l.c. 144; State ex rel. v. Broaddus, 216 Mo. 336.

A judgment rendered by a court of general jurisdiction is presumed to be valid until vacated by proper proceedings instituted for that purpose, where the judgment is one within the jurisdiction of the court rendering such judgment. Hess Warming & Ventilating Co. v. Burlington Grain Elevator Co., 280 Mo. 163, l.c. 185; Jefferson City Bridge & Transit Co. v. Elaser, Mo. Sup., 300 S.W. 778, l.c. 780; Lewis v. Lewis, Mo. App., 176 S.W. (2d) 556, l.c. 560, 561; Davis v. Morgan Foundry Co., Mo. App., 23 S.W. (2d) 231, l.c. 233.

The judgment in the case at bar is valid on its face and affirmatively states that the petition under consideration satisfied all legal and constitutional requirements as to form and substance. It is valid and binding on all concerned.

Conclusion.

In view of the foregoing, it is therefore the opinion of this department that Division No. 2 of the Magistrate Court of Nodaway County, Missouri, is a legally constituted court.

This conclusion makes it unnecessary to consider the other questions presented.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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