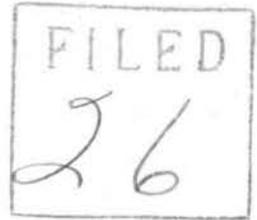


MAGISTRATES: Term of additional magistrate ends at next general election.



January 29, 1948

2/3

Honorable Raymond Eckles
Judge of the Magistrate Court
Nodaway County
Maryville, Missouri

Dear Judge Eckles:

This is in reply to your letter of recent date in which you request an opinion from this department on the following set of facts:

"On the 13 day of January, 1947, I was appointed by the Governor, and duly commissioned and qualified, a Magistrate within and for Nodaway County. My commission contains the following, '----- do hereby appoint and commission him as Magistrate within and for Nodaway County of the State of Missouri until his successor is elected or appointed as provided by law -----.'

"Is this appointment until the next General Election, or does it terminate at the time of the ending of the term of Probate Judge and Ex officio Magistrate?"

Your appointment as magistrate is in accordance with the decision of the Missouri Supreme Court, en banc, in the case of State ex rel. Randolph County v. Walden, No. 40405, which was handed down on December 8, 1947, but is not yet reported. That case involved a construction of Section 1 of an act of the 63rd General Assembly relating to magistrates, found at page 765 of the Laws of Missouri, 1945. Section 1, among other things, provides for the appointment of additional magistrates, and reads, in part, as follows:

"Magistrates, as herein provided for, shall be elected at the general election to be held in 1946, and every four years thereafter, and shall hold their offices for four years, or until their successors are elected or appointed, commissioned and qualified: Provided, however, in counties of 30,000 inhabitants or less the probate judge shall be judge of the magistrate court. In counties of more than 30,000 and not more than 70,000 inhabitants there shall be one magistrate. In counties of more than 70,000 and less than 100,000 inhabitants there shall be two magistrates. In counties of 100,000 inhabitants or more there shall be two magistrates and one additional magistrate for each additional 100,000 inhabitants, or major fraction thereof. According to the needs of justice, in counties of more than 30,000 inhabitants, the foregoing number of magistrates in any county may be increased by not more than two, or such increased number may be decreased, by order of the circuit court, on petition of five hundred qualified voters of the county, and after hearing on not less than thirty days public notice to be published in some newspaper of general circulation in the county once each week for three consecutive weeks immediately preceding said hearing. No petition for additional magistrate shall be granted unless the circuit court finds from the evidence heard that the administration of justice requires that the number of magistrates be increased, and that the need for additional magistrate or magistrates is not temporary but appears to the circuit court that a permanent need exists. * * *" (Underscoring ours.)

The court held that the underscored part of the above section was unconstitutional as an attempt to limit or restrict the terms of Section 18 of Article V of the Constitution of Missouri. In other words, additional magistrates may be appointed in any county in the state regardless of population.

With regard to the question presented concerning the term of office of such additional magistrates appointed pursuant to said Section 1, your attention is directed to the last part of that section, which provides:

"Such additional magistrates shall be appointed by the governor when authorized by proper order of the circuit court certified to him, and such appointee shall hold office until the next general election at which election a successor shall be elected to hold office for the unexpired term or full term as the case may be, said terms to be identical with that of other magistrates."

It is provided that additional magistrates shall be appointed by the Governor and shall hold office until the next general election. We believe that this is the controlling provision, therefore your term of office will run until the next general election which will be held in November of 1948. At this election a successor will be elected to hold said office for the period of the unexpired term of the present probate judge and ex officio magistrate so that the terms of all magistrates will thereafter be identical. The language of Section 1 is clear and unambiguous and will admit of no other construction. It must be given effect as written. *St. Louis Amusement Company v. St. Louis County*, 147 S.W. (2d) 667, 347 Mo. 456; *State ex rel. Jacobsmeyer v. Thatcher*, 92 S.W. (2d) 640, 338 Mo. 622; *Cummins v. Kansas City Public Service Co.*, 66 S.W. (2d) 920, 334 Mo. 672."

Conclusion.

In view of the foregoing, it is the opinion of this department that your term of office as additional magistrate within and for Nodaway County will terminate at the next general election.

Respectfully submitted,

APPROVED:

DAVID DONNELLY
Assistant Attorney General

J. E. TAYLOR
Attorney General

DD:ml