

JUSTICES OF THE PEACE: May perform marriage ceremonies only  
in their respective townships.

October 7, 1939

Honorable Walter G. Stillwell  
Prosecuting Attorney  
Marion County  
Hannibal, Missouri



Dear Sir:

This will acknowledge receipt of your request for an  
opinion, dated August 28, 1939, as follows:

"There seems to be a growing practice  
in this county for Justices of the  
Peace to perform wedding ceremonies  
outside the township for which they  
are elected.

May I please be advised by your depart-  
ment whether or not a justice of the  
peace is within his rights in performing  
a marriage ceremony outside the township  
from which he is elected."

Section 2976, R. S. Mo. 1929, authorizes justices of  
the peace to perform marriage ceremonies, and is as follows:

"Marriages may be solemnized by any  
judge of a court of record or any jus-  
tice of the peace, or any licensed or  
ordained preacher of the gospel, who  
is a citizen of the United States or  
who is a resident of and a pastor of  
any church in this state."

Section 2136, R. S. Mo. 1929, provides for the election  
of two justices of the peace in each municipal township, and  
we quote at length from this section to show the limitations  
placed upon such offices by the legislature.

October 7, 1939

"Each municipal township, except as otherwise provided by law, shall be entitled to two justices of the peace, to be elected and commissioned in the manner hereinafter provided; but in case there shall be in any such township an incorporated town or city having a population of over two thousand inhabitants, and less than one hundred thousand inhabitants, said town or city shall be entitled to one additional justice of the peace, who shall be a resident of such town or city; \* \* \* \* and who shall be a resident of and keep and maintain his office in the district for which he is elected."

In the following section, 2137, which is amended by Laws of Missouri, 1939, at page 343, a provision is made for the appointment of an additional justice of the peace who shall reside at least five miles from any other justice of the peace of such township.

Article II, Chapter 10, R. S. Mo. 1929, fixes the jurisdiction of justices of the peace as regards their judicial functions. We note from Section 2176, which is the last section in said article, that in case of the incapacity of any justice in any township to perform his duties or dispose of the business pending before him, only another justice in the same township may act for him. Although we find in said Article II several sections extending his jurisdiction within the bounds of the county, it is apparent that this extension relates only to his powers to issue summons where one defendant resides in his township or to subpoena witnesses anywhere in the county in a matter pending in his court. This position is sustained in United States Mutual Accident Company v. Reisinger, 43 Mo. App. 571. All of the jurisdictional sections are set out in the opinion, and we find the following in the opinion of the court in regard to same:

"The sections, too, of the articles following the foregoing, relating to summons, how issued and by whom to be served, as well as the form of the same, all show

how carefully the jurisdiction of the justice is limited to his county."

Furthermore, in a case by our Supreme Court, St. Louis v. Sommers, 148 Mo. l. c. 401, it is said:

"The solemnization of a marriage is in no sense a judicial act. \* \* \* \* \* It may be performed anywhere within his jurisdiction, \* \* \* \* \* " (Italics ours.)

It becomes necessary for us to consider, therefore, the extent of the non-judicial jurisdiction of a justice of the peace. A justice of the peace receives a fee of two dollars for solemnizing marriages, as provided by Section 11778, R. S. Mo. 1929, and such act is, therefore, an official act. Douglas County v. Vinsonhaler, 118 N. W. 1058.

The jurisdiction of justices of the peace in performing both their judicial functions and official acts has been discussed in several late cases by our courts. In Altergett v. O'Connor, 6 S. W. (2d) 1012, we find the following quotations from other authority and jurisdictions cited with approval by the court:

"Kelley's Justice Treatise, sec. 5, page 7, says:

'A justice elected for one district or township has no right or authority to establish his office and exercise his official functions within the limits of another district or township.'

\* \* \* \* \*

The Supreme Court of Kansas in Phillips v. Thralls, 26 Kan. 780, upon a similar question said:

'One purpose contemplated in the organization of these courts was to have neighborhood courts convenient to every individual for the settlement of minor disputes. If one justice may move his

court out of his township to any other place in the county, all may; and we may have the spectacle of all the justices of all the townships in a county congregating in the county seat, and holding office there. Thus would one of the beneficent purposes of these inferior courts be defeated.'

The Supreme Court of the state of Kentucky in the case of Wheeler v. Schulman, 165 Ky. 185, 176 S. W. 1017, in deciding that a justice had a right by injunction to prevent any justice from holding court in his district, said (165 Ky. 189) loc. cit. 1019:

'Manifestly, if one justice of the peace may maintain a court within a district for which he was not elected, every other justice in the county could do likewise, and the anomalous situation would be presented, of eight justices' courts, in full operation in one district of the county, while the other districts of the county would substantially be left barren of whatever benefits such courts may bestow.'

\* \* \* \* \*

In Nelson Clements v. City of San Antonio, 34 Tex. 25, the case of Foster v. McAdams, supra, is followed, and the court said:

'The justice of the peace elected for one precinct has no right or authority to establish his office and exercise his official functions within the limits of another precinct; and if he should attempt to do so, his acts would be void.'

The same question was before the Supreme Court of Georgia in Block v. Henderson, 82 Ga. 23, 8 S. E. 877, 3 L. R. A. 325, 14 Am. St. Rep. 138. The syllabus, which is well written says:

'When a justice of the peace went outside the limits of his district and undertook to hold his court, he had jurisdiction neither of the subject-matter nor of the person, and no waiver or agreement made before him outside of his jurisdiction could confer jurisdiction upon him.'

In Hart v. Grove, 76 Okl. 179, loc. cit. 180, 184 P. 572, the court, in discussing the act of a justice of the peace outside the state, said:

'He (meaning the justice) can perform his official acts only in his own township.'

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Outside of court the justice or the judge is but a man, and outside of the district for which he was appointed or elected his judgments have no more force than if rendered by a mere bystander.'"

To the same effect are Jackson v. McKee, 28 S. W. (2d) 407, State Bank of Sugar Creek v. Anderson, 36 S. W. (2d) 138, McKenna v. Wittman, 25 S. W. (2d) 541, Travalant v. Kelley Motor Company, 16 S. W. (2d) 709.

It is our conclusion, therefore, that a justice of the peace has no non-judicial jurisdiction outside the township for which he is appointed or elected, and that he cannot lawfully perform marriage ceremonies outside the boundaries of such township.

Respectfully submitted,

ROBERT L. HYDER  
Assistant Attorney General

APPROVED:

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W. J. BURKE  
(Acting) Attorney General