

CONSTABLES: County court is not prohibited from appointing
OFFICERS: a constable who is in the general mercantile
business.

August 7, 1941

Honorable Robert P. C. Wilson III
Prosecuting Attorney
Platte City, Missouri



Dear Sir:

We are in receipt of your request for an opinion from this department under date of August 4, 1941, which reads as follows:

"The county court recently appointed a merchant to serve as constable in one of the townships in this county. At that time I advised them that I was of the opinion such action did not violate any of the provisions of our Statutes and Constitution. I pointed out the provisions of Section 13376 R. S. Mo. 1939, but told them that there was nothing in that section which referred to Constables, and that that section had reference only to Deputy Constables. I would like the official opinion of your department as to whether I was correct in my analysis of that section, and as to whether there is any other provision in the Constitution or our Statutes which would prevent the appointment as Constable of a person engaged in the general mercantile business."

In your request you state that the county court has recently appointed a merchant to serve as constable in one of the townships in your county. This appointment of constable was probably made under Section 2523, R. S. Missouri 1939, where the appointment is made in case of the division or the extension of a municipal township. If the appointment was made under this section, the appointment should have been made by the justices of the peace who were also appointed by the county court in case of a division or extension of a township. But

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since you state in your letter that the county court appointed the constable it will be presumed that the appointment was made under Section 13374, R. S. Missouri 1939, which reads as follows:

"If any vacancy occur in the office of constable, the county court of the county where in such vacancy may happen shall appoint a constable, who shall continue in office until the next general election, and until a successor be qualified, and the constable appointed shall execute a bond similar to that given by a constable who is elected. And whenever a petition shall be presented to the county court of any county in this state, signed by twelve qualified voters of any unincorporated town or village in such county containing three hundred or more population, setting forth that there is no constable nor deputy constable residing therein, or within one mile thereof, the county court shall appoint an additional constable for the township in which said town or village is situated, who shall be a resident of such town or village, and shall qualify as constables are by law required to qualify, and shall possess all the powers and perform all the duties of the constable of the township."

This section provides that in case of a vacancy in the office of constable the county court shall appoint a constable and whenever a petition shall be presented to the county court of any county signed by twelve qualified voters in any unincorporated town or village containing three hundred or more population, the county court shall appoint an additional constable for the township. The only qualification set out in this section is that they shall qualify as regular constables are by law required to qualify.

Section 13370, R. S. Missouri 1939, partially reads as follows:

"At the general election to be held in 1920, and at each general election every two years thereafter, the qualified voters of each township in every county in this state shall elect a constable, who shall be a resident of the township for which he is elected, and who shall hold his office for two years and until his successor be elected and qualified: * * * * *

The only qualification mentioned in the above partial section and in the whole section is that the constable shall be a resident of the township for which he is elected. There is no restriction as to the election or the appointment of a constable who is a merchant.

As mentioned in your request, Section 13376, R. S. Missouri 1939, a deputy constable cannot be appointed who is or may be directly or indirectly connected with or engaged in the mercantile business, or a member of any firm engaged in such business, or a member of or connected with any collection agency, credit house, installment house or loan agency where money or moneys are sought to be collected by suit. After careful research of the statutes in reference to constables we find no law prohibiting the appointment of a constable who is a merchant.

CONCLUSION

Since no law prohibits the appointment of a merchant as constable, it is the opinion of this department that the county court may appoint a merchant to serve as constable, and in view of Section 13376, R. S. Missouri 1939, this constable cannot appoint a deputy constable who comes within the provisions mentioned in said section as to merchants and other employments mentioned therein.

Respectfully submitted

APPROVED:

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