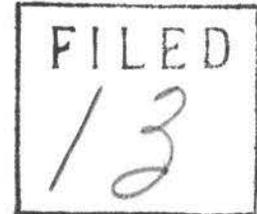


COURTS:

When held on holidays.

March 8, 1945

3-13



Honorable L. M. Bywaters
Prosecuting Attorney
of Clay County
Liberty, Missouri

Dear Mr. Bywaters:

Your letter of February 20, requesting an opinion from this department on the authority of judges of a county court to hold court on legal holidays, has been received.

Your letter states:

"I would greatly appreciate an opinion from your office as to whether or not the County Court of a County can legally hold sessions and draw salary for their services on the days listed as public holidays in Section 15310 of the Revised Statutes of the State of Missouri of 1939."

In answering your inquiry, Sections 15310, 907 and 2027, R.S. Mo. 1939, should be read together. Those sections are respectively as follows:

Section 15310, R.S. Mo. 1939:

"The following days, namely: the first day of January, the twenty-second day of February, the thirtieth day of May, the fourth day of July, the first Monday in September, the eleventh day of November, any general primary election day, any general state election day, any thanksgiving day appointed by the president of the United States or by the governor of this state, and the twenty-fifth of December, are hereby declared and established public holidays; and when any of

such holidays falls upon Sunday, the Monday next following shall be considered such holiday."

Section 907, R.S. Mo. 1939:

"No person, on Sunday or on any other day declared and established a public holiday by any statute of this state, shall serve or execute any writ, process, warrant, order or judgment, except in criminal cases, or for a breach of the peace, or when the defendant is about leaving the county, or in any case of attachment or replevin when the debtor is about fraudulently to secrete or remove his effects, or in any injunction case; and the service of every such writ, process, warrant, order or judgment shall be void, and the person serving or executing the same shall be as liable to the suit of the party aggrieved as if he had done the same without any writ, process, warrant, order or judgment."

Section 2027, R.S. Mo. 1939:

"No court shall be open or transact business on Sunday, unless it be for the purpose of receiving a verdict or discharging a jury; and every adjournment of a court on Saturday shall always be to some other day than Sunday, except such adjournment as may be made after a cause has been committed to a jury; but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it shall be necessary in criminal cases, to preserve the peace or arrest the offender, nor shall it prevent the issuing and service of any attachment in a case where a debtor is about fraudulently to secrete or remove his effects."

The familiar rule of construction of where one subject is expressly dealt with all other subjects are excluded from the terms of a statute, applies in this case. That rule of construction is given in 59 C.J., page 984, and is as follows:

"In accordance with the maxim, 'expressio unius est exclusio alterius,' where a statute enumerates the things upon which it is to operate, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned;
* * * "

Sunday is not declared to be a holiday by the terms of Section 2027, supra, but it is singled out as the only day upon which no court shall be held, except for certain purposes therein stated.

The above quoted rule of construction of statutes has been established and given usage by text writers and courts, in giving effect generally to the operation of statutes, in every jurisdiction. Under that rule where Section 907 prescribes that certain things therein prohibited shall not be done on Sunday or on established holidays, it is to be understood as not only not prohibiting the doing of all other kinds of judicial or official acts on those days, except Sunday, but the right and authority to do them is to be implied therefrom.

Thus, with Sunday being the only day when holding court is prohibited, with the exceptions named in Section 2027, and no other kinds of court proceedings or official acts being prohibited by Section 907, R.S. Mo. 1939, except those therein stated, it would seem to be conclusive that courts may convene on all such holidays as are mentioned in Section 15310, and that when so convened, they may transact all business not prohibited by Section 907.

The Supreme Court of Missouri has given effect and expression to the above quoted rule of construction in many decisions where statutes were being construed. In the case of State ex inf. vs. Sweany, 270 Mo. 65, the court had before it the question whether the statutes authorizing the division of a common school district into two new districts included and authorized a division of a town, city or consolidated school district into two new school districts.

In holding in that case that the statute did not give such authority the court, l.c. 691, said:

"Section 10881, in its present form, was enacted in 1909 (Laws 1909, p. 819, sec. 130). Prior to that time it had been expressly held by this court that the law providing for division of common school districts did not apply to village school districts. (State ex rel. v. Fry, 186 Mo. 198.) Such being the case the Legislature, when it enacted Section 10881, knew that the provisions of Section 10837, relating to the division of one common school district into two new districts, would not apply to town or consolidated districts unless it so provided in the act, and knowing this to be true and failing to so provide it would be but to do violence to the plain language used to hold that it expressed an intention to apply provisions other than those expressly mentioned. To so hold would be to violate the well known canon of statutory construction, viz.: That the expression of one thing is the exclusion of another."

In the case of State vs. Jaeger, 63 Mo. 403, the Supreme Court gave expression to this rule. That was a criminal case in which cases all criminal statutes are to be given strict construction. Our Supreme Court has applied this rule in both civil and criminal cases in the construction of statutes. Many decisions could be cited but we are supplying only two here. In the Jaeger case, supra, l.c. 409, 410, in applying the rule, the court said:

"In Howell vs. Stewart, (54 Mo. 400) we held in conformity to English decisions there noted, that where a statute defining an offense, designated one class of persons as subject to its penalties, all other persons not mentioned, were to be deemed as exonerated.
* * *"

In the application of the above rule of construction to these statutes under review, and the approval given to the rule in the cases and text above cited and quoted, we believe this opinion could safely rest upon that rule of construction as the basis for holding that courts, including county courts, may hold court on statutory holidays,

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except where a holiday falls on Sunday, and county judges may charge their per diem therefor. We are not here, however, required to stand alone upon the rule of construction mentioned and discussed. Our Supreme Court and the Kansas City Court of Appeals have spoken on this question, and have rendered decisions holding that courts may be held on such statutory holidays.

In the case of State vs. Gould, 261 Mo. 694, the court had the matter of deciding whether courts may be held on holidays before it. On the question, the court, l.c. 705, said:

"The fact that the judgment and sentence against defendant were entered on May 30, a legal holiday, does not invalidate the sentence and judgment. By section 1785, Revised Statutes 1909, Sundays and other holidays are put on a par so far as the service of writs, process, warrants, orders and judgments is concerned. Such service is void. Section 3880, which prohibits the holding of courts on Sunday, does not, by its terms, include other holidays. In Bear v. Youngman, 19 Mo. App. 41, it was held that a judgment rendered by a justice of the peace on Thanksgiving day is not void under a statute which provides that a justice of the peace may hold court on any day except Sunday. It may be said that that case is not authority here. In Diesing v. Reilly, 77 Mo. App. l.c. 455, it was said: 'We are not, however, aware of any rule forbidding the performance of judicial duties on Christmas (twenty-fifth of December), or the other holidays mentioned in section 8952, Revised Statutes 1889. That section merely prohibits the service of civil process, except in certain attachment cases, but a judgment rendered on one of the days mentioned in the statute is not void. (Bear v. Youngman, 19 Mo. App. 41.)' "

The Kansas City Court of Appeals held that courts may be held on statutory holidays in the case of Lloyd v. Grady et al., 180 S.W. 1032. On the question, the court,

l.c. 1033, said:

"The record proper shows that plaintiff's motion to set aside the nonsuit and for a new trial was not filed until Tuesday, February 24, 1914. February 22d fell on Sunday, and under the statutes the following day was a legal holiday. Section 6701, R.S. 1909. Plaintiff had four days, after taking the nonsuit, in which to file his motion for a new trial (section 2025, R.S. 1909), and in computing the time the ensuing Sunday should be excluded. * * * The statute provides that no court shall be open or transact business on Sunday except for certain specified purposes. Section 3880, R.S. 1909. But there is no statute prohibiting the holding of court upon other statutory holidays, and in the absence thereof such days, not being dies non juridicus, must be included in computing the period for filing motions for a new trial. * * * In this case Monday, February 23d, must be included in the computation, and, so including it, the record shows that the motion was not filed in proper time."

CONCLUSION.

It is, therefore, the opinion of this department, considering the above cited and quoted statutes, and text authorities and decisions hereinabove quoted, that "the County Court of a County can legally hold sessions and draw salary for their services on the days listed as public holidays in Section 15310 of the Revised Statutes of the State of Missouri of 1939," unless such holiday should fall on Sunday.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
Attorney-General

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