

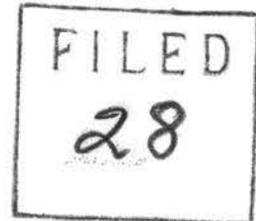
COUNTY COURTS: Associate judges of St. Louis County Court to be elected at general election to be held in 1950.

CONSTITUTIONAL LAW: An act found Laws of Mo., 1943, page 509, relating to St. Louis County rendered unconstitutional by adoption of Constitution of Missouri, 1945.

August 18, 1949

Honorable John D. Fels
Member, Missouri State Senate
200 North Taylor
Kirkwood, Missouri

8/27/49



Dear Sir:

Reference is made to your request for an official opinion of this department, reading as follows:

"A question has arisen as to whether those associate or district judges of the County Court of St. Louis County who were elected in 1948, will hold office for two years or four years.

"Prior to 1944, Sec. 2475 R.S. Mo. fixed the terms of all such judges at two years, but Laws of Missouri, 1943, p. 509, provided that in 1944 and every four years thereafter, county judges in counties of 250,000 to 450,000 population were to be elected for four year terms. Those associate judges of the County Court of St. Louis County, who were elected in 1944, held office under this statute until 1948.

"The 1945 Constitution of Missouri provides in Article VI, Sec. 8., that the organization and powers of each of the four classes of counties shall be defined by general laws, so that all counties within the same class shall possess the same powers and be subject to the same restrictions, and that a law applicable to any county shall apply to all counties in the class to which such county belongs.

"I would like to have your official opinion for the information of the County Court of St. Louis County as to whether Laws of Missouri, 1943, p. 509, governs the term

of the present associate judges of that Court, who were elected in 1948, or whether that statute became ineffective after July 1, 1946, under the provisions of Sec. 2 of the Schedule of the 1945 Constitution."

The general statute providing for the election of associate judges of the county courts in the several counties of the state is found as Section 2475, R. S. Mo. 1939, which reads in part as follows:

"At the general election in the year eighteen hundred and eighty, and every two years thereafter, the qualified voters of each of said districts shall elect a county court judge, who shall hold his office for a term of two years and until his successor is duly elected and qualified; * * * * "

Subsequent to the passage of the above quoted statute, an act was passed by the General Assembly, found Laws of Missouri, 1943, page 509, which related to the election of associate judges of the county courts in counties having a population of not less than 250,000 and not more than 450,000 inhabitants. The pertinent portion of such statute, insofar as it relates to the question now under consideration, reads as follows:

"In all counties in this State now having or which may hereafter have a population of not less than 250,000 and not more than 450,000 inhabitants, the qualified voters of each of the districts as provided in Section 2474 of the Revised Statutes of Missouri 1939, shall elect at the general election in the year 1944 and every four years thereafter a county court judge, who shall hold his office for a term of four years and until his successor is duly elected and qualified; * * * "

Reference to the 1940 decennial census discloses that such statute related exclusively to St. Louis County. Insofar as population is concerned, the same situation prevails.

As a part of the Constitution of Missouri, 1945, we find Section 8 of Article VI, which reads as follows:

"Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

Pursuant to the above quoted constitutional mandate, the General Assembly, by an act found Laws of Missouri, 1945, page 1801, classified the various counties of the state, creating among others Class (1) which embraces both St. Louis County and Jackson County. The classification is based upon valuation.

In this state of the statutory and constitutional provisions, the question is squarely presented as to whether or not the act found Laws of Missouri, 1943, page 509, conflicts with the above quoted constitutional provision and if so, the effect of such conflict upon the act.

It will be noted that the constitutional provision provides that general laws must be enacted defining the mode of organization and powers to be exercised by the counties of the several classifications. Clearly the act found Laws of Missouri, 1943, page 509, is one relating to the "organization and powers" of a county, and, therefore, its constitutionality must be measured by the provisions of Section 8 of Article VI, Constitution of Missouri, 1945. Further, as we have pointed out previously, the act mentioned is limited in its application to only one county forming a part of Class (1).

In *State ex Inf. Taylor vs. Kiburz*, 208 S.W. (2d) 285, the Supreme Court of Missouri, en banc, had under consideration the effect of Section 8 of Article VI, Constitution of Missouri, 1945, upon a statute existing at the time of the adoption of the Constitution. The statute there under consideration did not contain the vice found in the act here under consideration, viz., that it was inapplicable to all counties of a particular class. As a matter of fact, the statute under consideration

by the Supreme Court in the Kiburz case was actually applicable to all of the counties forming one of the classes established by the General Assembly. However, even that fact did not have the effect of saving such statute. The court said, l.c. 288:

" * * * So, even assuming that the later enacted classification act was sufficient to validate pre-existing Section 8655 as a general law defining the power of counties (with respect to the office of county highway engineer), under Section 8, Art. VI of the Constitution, because applicable alike to every county in the state, the proviso would have to fall because it is neither applicable to all of the counties of the state, nor to any particular class or classes of counties, as defined by the classification act, and, hence, is in no sense a general law within the meaning of the constitutional provision we are considering. The circumstance that the two counties to which the proviso ever applied (St. Louis County and Jackson, each having a population of more than 50,000, taxable wealth exceeding forty-five million dollars, and adjoining or containing a city of more than 100,000 inhabitants) now comprise the whole of "Class 1" counties, as presently constituted, would not save it."

Applying the rule enunciated in the Kiburz case to the statute here under consideration, we reach the conclusion that the same is unconstitutional.

CONCLUSION

In the premises, we are of the opinion that an act, found Laws of Missouri, 1943, page 509, is unconstitutional as being in conflict with Section 8 of Article VI of the Constitution of Missouri, 1945, and that associate judges of the County Court of St. Louis County must be elected at the general election to be held in 1950 under the general provisions of Section 2475, R. S. Mo. 1939.

APPROVED:

Respectfully submitted,

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