

CORONERS:  
Special Deputies:

Jackson County Coroner is without authority to appoint "special deputy coroners" except to fill those positions created by statute.

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November 21, 1958

Honorable William A. Collet  
Prosecuting Attorney  
Jackson County  
Kansas City 6, Missouri

Dear Mr. Collet:

In your letter of September 22, 1958 you wrote as follows:

"A question has arisen here in Jackson County, concerning the practice of the Coroner of Jackson County designating certain persons as 'Special Deputies Coroners.' These persons are issued identification cards, but are paid no compensation, for any services that they may be called upon to perform. I am advised by the Coroner that in 1955, the directors of the Civil Defense in Jackson County, requested that as many as 1,000 persons be named for call and service in case of emergencies. I am further advised that approximately 100 persons have been named as Special Deputies Coroners to serve without compensation.

"I would appreciate your advice as to whether or not the appointment of the Special Deputies Coroners to serve without compensation as outlined above is authorized by law, and in fact, whether the appointment of such deputies is unlawful."

The office of coroner is not mentioned in our Constitution although it was an old common law office. Since it is in this state, at present, an office created by the Legislature, the incumbent has no powers, duties or authority except that which is prescribed by law.

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It is said in State ex rel. Rosenthal v. Smiley, 263 S.W. 825, 304 Mo. 549, that:

"Only the Legislature has power to create a public office (other than a constitutional office) as an instrumentality of government \* \* \*."

See also State ex rel. Harvey v. Wright, 158 S.W. 873, 251 Mo. 325, that the Constitution, now Art. VII, Sec. 7, delegates to the Legislature the authority to provide by statute who shall make the various appointments.

"An 'office' is a privilege in gift of the state, depends on people's favor, and is a public trust because it is created in the interest and for the benefit of public."  
(Motley v. Callaway County, 149 S.W.2d 875, 347 Mo. 1018.)

See 46 C.J., 1062, Section 381, regarding the status of deputies and assistants wherein it is said:

"Where \* \* \* provision is made by statute for the position of deputy, such deputy is regarded as a public officer."

Article VII, Section 7, of the Constitution states:

"Except as provided in this Constitution, the appointment of all officers shall be made as prescribed by law."

Nothing is said in your letter regarding the duties of such "special deputies." But since our statute, Section 58.150, creates the position of a "special deputy" - class "B" - apparently any "special deputy" would be a public officer. Since, as noted above, the Constitution dictates that "the appointment of all officers shall be made as prescribed by law," no "special deputy" position may be created in any manner not prescribed.

Section 58.150 clearly creates four classes of deputies for the coroner in Jackson County. Expressly, it is stated there that the coroner shall be entitled to "\* \* \*; at least one class 'B' special deputy \* \* \*." If there is any necessity for extra deputies there is ample provision for them under the "class 'D' extra deputies" authorized by that section. It is expressly provided there that even these "Class 'D' extra deputies" are

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"to be paid not less than seven dollars nor more than nine dollars per day for such times as they may be actually employed in the discharge of their duties." See the 1955 amendment to Section 58.150, RSMo Cum. Supp. 1957. Certainly the only "special deputies" the statute mentions (those in Class "B") are paid deputies. We have searched in vain for any authority to appoint any "extra" deputies or "special" deputies who are to be "paid no compensation." In view of the above quoted provisions of law, it was necessary to create these specific deputy positions before the coroner could have the authority to appoint any of them. See also 46 C.J. 384, wherein it is said "without statutory authority deputies have no power with respect to the duty of an office involving the exercise of judgment and discretion \* \* \*." It is certainly clear that a considerable part of the statutorily prescribed duties of the coroner consist of far more than mere ministerial functions. Many are quasi-judicial in nature and certainly require the exercise of "judgment and discretion."

Because of the nature of the coroner's duties, because under certain situations he has the authority to perform the duties of the sheriff; because he is a conservator of the peace; because he has authority to subpoena witnesses, administer oaths, and issue writs of attachment to compel the attendance of witnesses, the public is extremely interested in what persons and under what conditions any person holds any of the powers, duties, functions, privileges, etc., of this office.

A public officer cannot by contract or otherwise make over to a private person the officer's functions or powers for these are committed to the officer for the public welfare and not for private gain. See in this regard *In re Coal Tp. School Directors*, 138 A., 1.c. 750 (3), and *Motley v. Callaway Co.*, 149 S.W.2d 875, 876 (2).

We know of no reason why a request by the local Civil Defense authorities creates any authority in the coroner to make such appointments. A search of the Civil Defense Act of the state will reveal no such grant of authority.

#### CONCLUSION

In view of the premises, it is our opinion that the coroner is without authority to make appointments except to those

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offices created by statute and the offices of the "special deputies coroners" as you mentioned is not provided by statute and the appointment of some person to such is not authorized.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours,

John M. Dalton  
Attorney General

RSN:hw