

JUSTICES OF THE

PEACE: No specific constitutional or legislative prohibition against justices of the peace soliciting marriage ceremonies.

April 21, 1941

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Hon. Joseph L. Gutting
Prosecuting Attorney
Clark County
Kahoka, Missouri

Dear Sir:

We are in receipt of your letter of April 19, 1941, wherein you make the following request for an opinion:

"Clark County is in the extreme north-east corner of the state, bounded on the east by the state of Illinois and on the north by the State of Iowa. Therefore many people come from both states to get marriage Licenses.

"Since Iowa has passed the three day waiting period and the physical test, many more come to this county to get married and on Saturdays 30 or 40 get married (I mean couples).

"There are two justices of peaces in this town and one of them employs people to contact people who come out of Iowa and Illinois and ask them to be married before this particular justice. This creates an adverse atmosphere here and many people do not like the fact that solicitation is made for marriages. I,

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as well as they, fear that if this can legally be done then the situation will grow worse and the other justice will be forced to do it. One of the persons so solicitating said he was doing it for nothing, however anyone knows he was doing it for pay or he would not be doing it.

"I would appreciate it if you would give me an opinion on the matter as to whether or not it can be stopped and if so how. As I remember, Justice hart of St. Louis was ousted out of office for the same practice but could continue as he was an ordained minister but could not as a justice of peace."

At the outset we wish to state that our office has had similar requests for opinions and we are enclosing an opinion which was rendered by this office on January 20, 1941, to Hon. James D. Clemens, Prosecuting Attorney of Pike County, Missouri. The opinion enclosed does not answer the identical question that you asked in your letter, but we thought perhaps that due to the fact that you were the prosecuting attorney you would also be desirous of an answer to the questions raised in this opinion.

Article 4, Section 37 of the Constitution of Missouri, page 122 C.R. S. Missouri, 1939, provides as follows:

"In each county there shall be appointed, or elected, as many justices of the peace as the public good may require, whose powers, duties and duration in office shall be regulated by law."

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Section 3363 R. S. Missouri, 1939, provides as follows:

"Marriages may be solemnized by any judge of a court of record or any justice 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."

In reading the remaining sections of the Statutes of Missouri, we do not think there will be found any specific section which prohibits a justice of the peace from entering into the activities in the procurement of persons who are contemplating an immediate marriage. Therefore, the only way that the situation which confronts you could be controlled or eradicated would be by legislative enactment or by restricting a justice of the peace through rules and regulations as explained in the opinion enclosed. The legislature may not have thought it advisable to enact a statute specifically prohibiting a justice of the peace from soliciting marriage ceremonies, thinking that the community could regulate the situation through the ballot.

In the case of State v. Richman, 148 S. W. (2d) 796, the court said:

"* * In order to sustain the State's contention on this point we would have to write into the statute something -- and an important 'something' -- which the Legislature did not see fit to put there. This we do not feel we have authority to do. As we have said we cannot pass upon the question of the wisdom of the legislative act. We may construe it, but, absent some

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constitutional consideration, not here present, we may not say the Legislature should not have enacted it, nor may we, under the guise of construction, say the Legislature meant something which clearly and distinctly it did not say and clearly and distinctly refrained from saying."

The above is taken from a criminal case, but it states the law in a civil case as well.

CONCLUSION.

Therefore, we are of the opinion, that there is no specific statute which prohibits a justice of the peace from soliciting marriage ceremonies, and the only regulation that can be brought to bear upon a justice is through regulations similar to the one which has already been passed upon by this office as set forth in the opinion herein enclosed.

Respectfully submitted,

APPROVED:

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