LAWS: Effective date of under ~~par~~ sec. 36, of Constitution as ammended.
COURTS, TERMS OF: Effect of change of terms by legislative enactment (House Bill No. 509)

August 19, 1943

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Hon. John B. Smoot
Prosecuting Attorney
Scotland County
Memphis, Missouri

Dear Sir:

We are in receipt of your letter of August 16, last, requesting an opinion of this office, which letter is as follows:

> "House Bill No. 509 amending Section 2202, Article 3, Chapter10, Revised Statutes of Missouri, 1939, enacted by the 62nd General Assembly and approved by the Governor on July 26, 1943, changes the terms of court for the 37th Judicial Circuit of Missouri. The Act provides for three terms instead of two. Prior to the enactment of the above House Bill, the terms of court as provided by Section 2202 Revised Statues of Missouri, 1939, for Scotland County was the third Monday in May and the second Monday in November. Under the amendment three terms are provided for, namely, the third monday in May, the first Monday in September and the first monday in January.
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> "The act provides for no effective date nor does it have a saving clause to avoid confusion of terms of the present court. A number of suits and alias writs returnable to the November Term of the Circuit Court have been served. The above referred to House Bill does not provide for a November Term but abolishes said term.
>
> "May I have the opinion of your office relative to the effective date of the amended law and your opinion as to whether or not a November Term 1943 of the Circuit Court can be held."

House Bill 509 as enacted is as follows:

"Section 1. That Section 2202, Article 3, Chapter 10, Revised Statues of Missouri, 1939, relating to Thirty-seventh Judicial Circuit, be and the same is hereby amended by striking the words beginning in line four, "on the third Monday in May and the second Monday in November", and inserting in lieu thereof the following, "on the first Monday in January, the third Monday in May and the first Monday in September", so that, when amended, said section shall read as follows:

"Section 2202. In the county of Clark, on the first Mondays in April, August and December; in the county Scotland, on the first Monday in January, the third Monday in May and the first Monday in September; in the county of Schuyler on the first Mondays in May and October."

During the session of the 62nd General Assembly, held in Jefferson City, beginning in January, 1943, there was a Concurrent Senate Resolution presented (Resolution No. 2) which recommended and resolved that an amendment to the Constitution be made declaring that no law passed by the General Assembly should become effective until ninety days after the signing of such laws by the Governor of this State. This Resolution was presented in the form of an Amendment to the Constitution on April 6, 1943, to the electorate, and the same passed. Said Amendment provides as follows:

"Amendment repealing Section 36, Article IV, Missouri Constitution, and enacting new section providing effective date of laws of General Assembly, except appropriation acts and emergency acts.

"JOINT AND CONCURRENT RESOLUTION submitting to the qualified voters of the state of Missouri and amendment repealing Section 36, of Article IV of the Constitution of Missouri and enacting in lieu thereof a new section relating to the same subject establishing the effective date of laws, to be known as Section 36 of Article IV.

"Be it resolved by the Senate, the House of Representatives concurring therein:

"That at a special election to be called by the Governor for that purpose, or at the general election, to be held in this state on the first Tuesday after the first Monday of November in the year 1944, there shall be submitted to the qualified voters of this state for adoption or rejection a proposition to repeal Section 36 of Article IV of the Constitution of Missouri relating to the effective date of laws, and to enact in lieu thereof a new section relating to the same subject matter to be known as Section 36 of Article IV and to read as follows:

"Section 36. No law passed by the General Assembly, except appropriation acts, shall take effect or go into force until ninety days after enactment and approval thereof as otherwise provided by this Article, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act), the General Assembly shall, by a vote of two-thirds of all the members elected to each house, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journal."

Section 659, R. S. Mo. 1939, as follows:

"A law passed by the general assembly shall take effect ninety days after the adjournment of the session at which it is enacted, subject to the following exceptions:

"(a) A law necessary for the immediate preservation of the public peace, health or safety, which emergency must be expressed in the body or preamble of the act and which is declared to be thus necessary by the general assembly, by a vote of two-thirds of its members elected to each house, said vote to be taken by yeas and nays, and entered on the journal or a law making an appropriation for the

current expenses of the state government, for the maintenance of the state institutions or for the support of public schools, shall take effect as of the hour and minute of its approval by the governor; which hour and minute may be endorsed by the governor on the bill at the time of its approval.

"(b) In case the general assembly, as to a law not of the character hereinbefore specified, shall provide that such law shall take effect on a date in the future subsequent to the expiration of the period of ninety days hereinbefore mentioned, said law shall take effect on the date thus fixed by the general assembly.

"(c) Laws not of the nature hereinbefore specified enacted by the general assembly at its regular session in 1939 and each ten-year period thereafter, and except as otherwise provided by law, the Revised Statutes of 1939 and each ten-year period thereafter, shall take effect on the first day of November in the year of their enactment or authorization: Provided, that unless suspended under the referendum or unless otherwise provided by law, laws changing the time of holding court shall take effect in ninety days after the adjournment of the session at which such laws may have been enacted."

At first glance it might appear that the constitutional amendment above quoted provides that the laws are to become effective after ninety days from the date of enactment and approval thereof. However, after careful examination thereof, it will be noted that said law is negative in character providing that "no law passed by the General Assembly * * * * shall take effect or go into force until * * * *."

If the law makers had intended said act to be affirmative in character it would have been simple to have it read "All laws passed by the General Assembly * * * * shall take effect or go into effect ninety days after enactment and approval thereof * * * *."

It is true that Section 659, supra, is somewhat of a repetition of Section 36, of the Constitution as it existed prior to the adoption of the amendment wherein quoted, but if the legislature intended that said act should be repealed, it probably would have acted on said intent and repealed said statue. In fact, House Bill 652 was perfected in the house during the 62nd General Assembly but failed to be enacted, which bill purposed to repeal said Section 659, and to enact a new Section in lieu thereof. This fact indicates that the present force and effect of said Section 659 was known to the Legislature.

It was held in the case of Reed v. Goldneck, 112 Mo. App. 310, 86 S. W. 1104, that it must be presumed that the Legislature knows the existing law.

It has been repeatedly held that laws are presumed to be drafted with knowledge of all existing laws on the subject. Sikes v. St. Louis and S. F. R. Co., 127 Mo. App. 326, 105, S. W. 700. State ex rel. Case v. Wilson 151 Mo. App. 723, 132 S. W. 625.

In construing a statue, all statutes applicable to the same subject involved must be read and construed together and, if possible, harmonized. State v. Naylor 328 Mo. 335, 40 S. W. (2d) 1079.

When statues appear to be in conflict they must be harmonized if possible, according to legislative intent. Cotes & Hopkins Realty Co. v. Kansas City Terminal Ry. Co. 328 Mo.1118, 43 S. W. (2d) 817.

In construing statutes in pari materia, endeavor should be made, by tracing history of legislation on subject, to ascertain uniform and consistent purpose of Legislature, or to discover how policy of Legislature with reference to subject-matter has been changed or modified from time to time. State ex rel. and to Use of Geo. B. Peck Co. v. Brown, 105 S. W. 2d 909, 340 Mo. 1189.

In construing statutes in pari materia, not only acts passed at same session of Legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed, may be considered. State ex rel. and to Use of Geo. B. Peck Co. v. Brown, 105 S. W. 2d 909, 340 Mo. 1189.

It is not difficult to harmonize Section 36 of the Constitution as amended and Section 659 R. S. Mo. 1939. Said Section 36 of the Constitution as amended would allow all bills to take effect or go into force ninety days from the date of enactment and approval, if there were no statutory provision setting the effective time at a later date, namely: ninety days after the adjournment of the session at which enacted.

The effect of a change in terms of court on any return or other process priviously issued is specifically provided for in Section 2036 R. S. Mo. 1939, which section is as follows:

> "When any writ or other process is made returnable to any stated term of any court of record, and the legislature shall change the time of holding such term, such process shall be returned to the first term of the court held in pursuance of such change, and with the same effect as if returned at the time named in such process."

The court may continue with the November term if said term is begun before the effective date of the act changing terms. The law is so stated in 15 C. J., p. 880, par. 229 as follows:

> "An act which merely changes the time of holding a certain court does not abolish such court or effect a discontinuance of business therein pending, and a court which has convened prior to the passage of such an act is not prevented from concluding its session."

CONCLUSION

It is, therefore, the opinion of this department that House Bill 509, referred to in your letter, will not take effect or go into force until ninety days after the adjournment of the session of the Legislature in which it was enacted.

This department is of the further opinion that the November term, 1943, of the said Circuit Court can be held

if the term begins before the period of ninety days after adjournment of the 62nd General Assembly has expired. If the act changing terms of court becomes effective during the term of court it will not prevent the conclusion of business in that particular term.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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