

OFFICERS: (1) Prosecuting Attorney of the City of St. Louis has only jurisdiction concurrent with the St. Louis Court of Criminal Correction; (2) It is the duty of the Circuit Attorney of the City of St. Louis to enforce the provisions relative to the State Food and Drug laws.

November 19, 1943

11/24



James Stewart, M. D.  
State Health Commissioner  
Jefferson City, Missouri

Attention: Mr. W. D. Cruce, Supervisor  
Division of Food and Drugs

Dear Sir:

The Attorney General wishes to acknowledge receipt of your letter of October 23, 1943, in which you request an opinion of this department. This letter, omitting caption and signature, is as follows:

"I am enclosing a copy of a letter from Mr. Thomas M. Gioia, Associate Prosecuting Attorney of the City of St. Louis. I would like your opinion in this matter as to what court and what prosecutor would have jurisdiction over both our new Food and Drug Laws and the old Food and Drug Laws, since the merchandise in question was in commerce within the State of Missouri while the old laws were in effect.

"By the direction of the Commissioner."

The principal question which your request contemplates is as to what official in the City of St. Louis shall perform the duties required of the prosecuting attorney under Article I, Chapter 58 of the Revised Statutes of Missouri for 1939, in the City of St. Louis, Missouri. Consequently, we will examine the statutes relating to the prosecuting attorneys and the jurisdiction of the Criminal Court of Correction of St. Louis.

We first wish to call your attention to Section 9859, R. S. Mo. 1939, which is in Chapter 58 aforesaid, and which provides the following:

"It shall be the duty of the prosecuting attorney in any county or city in the state, when called upon by the commissioner, or any of his assistants, to render any legal assistance in his power to execute the laws and to prosecute cases arising under the provisions of this article."

Obviously it is the duty of the prosecuting attorneys of the various counties to enforce the provisions of Chapter 58, supra, in their respective counties.

The St. Louis Court of Criminal Correction is a court exercising criminal jurisdiction in the City of St. Louis. The jurisdiction of this court is provided for in Section 2253, R. S. Mo. 1939, which section provides as follows:

"Said court shall have exclusive original jurisdiction of all misdemeanors under the laws of the state committed in St. Louis city, the punishment whereof is by fine, or imprisonment in the county jail, or both, or by forfeiture, except cases of assault and battery, and affray, or riotous disturbance of the peace, which are cognizable by justices of the peace, and in relation to which the jurisdiction of said court shall be concurrent with them; and the said court shall have concurrent jurisdiction with the police court of the city of St. Louis of all offenses which may be declared to be misdemeanors under any law of the state, and which may also be in violation of any ordinance of the city of St. Louis: Provided, that any action pending or which has been decided in either of said courts may be pleaded in bar or abatement, as the case may be, to a prosecution in the other of said courts for the same offense, with the like effect as if said prosecution were pending in the same court, or had been decided in the same court: Provided, that this law shall not be so construed as to give to said police court jurisdiction of any prosecution for a misdemeanor instituted in the name of the state of Missouri. It shall be the duty of the chief of police of said city to report within twenty-four hours after

arrest by the police, to the assistant prosecuting attorney of said court of criminal correction, the names of all persons charged with misdemeanors under the laws of this state, together with prosecuting witness and the names and residences of all other material witnesses in such case, which report shall be received by said assistant prosecuting attorney, and he shall thereupon proceed to institute such prosecution as required by law; and willful failure on the part of said chief of police, or other officer whose duty it shall be to act in the premises, to comply with the provisions of this section, shall be deemed a misdemeanor, whereof the party offending may be indicted and punished by a fine of not less than ten or more than one hundred dollars, any law of this state or any ordinance of the city of St. Louis to the contrary notwithstanding."

It will be noted from the above statute, and also from the other provision relative to the St. Louis Court of Criminal Correction, that this court only exercises criminal jurisdiction and has no jurisdiction of civil matters. The Prosecuting Attorney of the Court of Criminal Correction for the City of St. Louis is an officer of this court and is elected under and by virtue of the statutes pertaining to such court, and is spoken of specifically in Section 2240, R. S. Mo. 1939, which prescribes as follows:

"At the general election, every four years, there shall be elected by the qualified voters of St. Louis city a judge and clerk of said court, and a prosecuting attorney, to be styled the prosecuting attorney for the St. Louis Court of criminal correction of St. Louis city. Said judge shall possess the qualifications of a judge of the circuit court, and shall hold his office for the term of four years from the time of his election, and until his successor shall be duly elected and qualified, unless sooner removed from office. Said clerk shall possess the qualifications of a clerk of the circuit court, and be subject to all the requirements and obligations exacted of and imposed by

law upon clerks of courts of record, and shall hold his office for the term of four years from the time of his election, and until his successor shall be duly elected and qualified, unless sooner removed from office; and said clerk shall have power, by and with the consent of the judge of said court to appoint one or more deputies, which said appointment shall be approved by said court; thereupon said court shall fix the salary of said deputy or deputies, and said salary or salaries shall be paid monthly by the city of St. Louis. Said prosecuting attorney shall possess the same qualifications as required by law for circuit attorneys; he shall hold his office for the term of four years, and until his successor shall be duly elected and qualified, unless sooner removed from office."

From the foregoing section of the statutes, we wish to call your attention to the fact that the prosecuting attorney is styled "the prosecuting attorney for the St. Louis Court of Criminal Correction." It would appear to us that this office has jurisdiction concurrent with the court for which he is an officer and in view of the fact that the St. Louis Court of Criminal Correction has no civil jurisdiction, it is the opinion of this department that the Prosecuting Attorney of the St. Louis Court of Criminal Correction likewise has no civil powers but may only exercise the authority granted him as an officer of this particular court, the jurisdiction of which is purely criminal.

Since we have taken the view above, the question then is as to what officers will have the duty of enforcing the provisions of Chapter 58, supra, relating to the food and drug department in the City of St. Louis. It is, of course, common knowledge that all of the counties in the State of Missouri have prosecuting attorneys to exercise all of the duties relative to criminal actions in their respective counties, and, with the exception of two counties, they all represent their respective counties in any civil action in which it may be interested. However, in the City of St. Louis the statutes provide for an election of a circuit attorney. The section of the statute providing therefor is Section 12906, R. S. Mo., 1939, which prescribes the following:

"At the general election to be held in this state in the year 1892, and every four years thereafter, there shall be elected in the city of St. Louis one circuit attorney, who shall reside in said city, and shall possess the same qualifications and be subject to the same duties that are prescribed by this article for prosecuting attorneys throughout the state, and it shall be the duty of the city register of said city to transmit to the secretary of state an abstract of the votes given for each candidate for circuit attorney in said city, in the same manner as is required by law of clerks of county courts."

The procedure outlined in your request is of course provided for in Section 9860, R. S. Mo. 1939. This section of the statute is very long and consequently we will not set it out verbatim in this opinion. However, it provides that when goods are misbranded or adulterated, such food may be condemned and disposed of in the manner provided in such statute. There can be no doubt but that such an action would be strictly a civil proceeding and in view of the fact that the St. Louis Court of Criminal Correction has only criminal jurisdiction, the "Prosecuting Attorney of the St. Louis Court of Criminal Correction" would not have authority to act in the particular situation set out in your request.

It will be noted from Section 12906, supra, that the circuit attorney shall "possess the same qualifications and be subject to the same duties" as the prosecuting attorneys throughout the state. The authority of the circuit attorney of the City of St. Louis to prosecute civil actions was discussed in the case of State ex rel. Jones v. Howe Scale Co., 182 Mo. App. 658, 166 S. W. 328. In this case the court said:

"Manifestly the circuit attorney is charged with the duty of prosecuting this civil suit under Section 1007, for the duties of the Prosecuting Attorney of the City of St. Louis are carved out so as to relate alone to matters falling within the purview of the Court of Criminal Correction."

In view of the above decision, we feel that the Prosecuting Attorney of the St. Louis Court of Criminal Correction does not have jurisdiction to prosecute or institute a civil proceeding of the kind in question. We further feel that the Circuit Attorney of the City of St. Louis is in the same position as the prosecuting attorneys in the various counties, in that in matters of a civil nature such as the instant one, it is his duty to institute and prosecute such suits.

This department might further add that in the prosecution of misdemeanors provided for in Article I, Chapter 58 of the Revised Statutes of Missouri for 1939, it is our opinion that either the Prosecuting Attorney of the St. Louis Court of Criminal Correction or the Circuit Attorney of the City of St. Louis would have jurisdiction to file and try such misdemeanor cases since both officials have criminal jurisdiction.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

JSP:NH