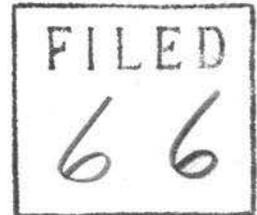


COUNTY COURT: County Clerk cannot designate a judge to be presiding judge under Section 2493, R. S. 1939, when the duly elected presiding judge is present.

January 20, 1944

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Hon. J. F. Newton
Presiding Judge
County Court
Wright County
Mansfield, Missouri

Dear Judge Newton:

The Attorney-General wishes to acknowledge receipt of your letter of January 18, 1944, in which you request an opinion of this department. This opinion request, omitting caption and signature, is as follows:

"Could Sec. 2493 be construed in such a manner as to give the County Clerk the authority to designate one of the associate judges as presiding, in the presence of the presiding judge and one associate judge?"

The section of the statutes, namely, Section 2493, R. S. Mo. 1939, which you mention in your letter, provides the following:

"A majority of the judges of the county court shall constitute a quorum to do business; a single member may adjourn from day to day, and require the attendance of those absent, and when but two judges are sitting and they shall disagree in any matter submitted to them, the decision of the presiding judge at the time being, to be designated by the clerk of such court, shall stand as the judgment of the court."

Your request deals with the problem of the county clerk appointing or designating one of the two judges present

as the presiding judge when one judge is absent. However, one of the judges present in your state of facts is the duly elected, qualified and acting presiding judge of the county court. Of course, you are familiar with the section of the statutes which specifies in what manner a presiding judge of the county court shall be elected. However, for the purposes of this opinion, we will cite such section, which is Section 2475, R. S. Mo. 1939, and which provides the following:

"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; and at the general election in the year eighteen hundred and eighty-two, and every four years thereafter, the presiding judge of said court shall be elected by the qualified voters of the county at large, who shall hold his office for the term of four years and until his successor is duly elected and qualified. Each judge elected under the provisions of this article shall enter upon the duties of his office on the first day of January next after his election."

It will be noted that the above section of the statutes provides that the Legislature has specifically designated that the presiding judge of a county shall be elected by the qualified voters of the county at large. Consequently, if our opinion to your question should be answered in the affirmative and hold that the county clerk has a right to designate one of the two judges as the presiding judge to transact business in the county court when the duly elected presiding judge is present, it would necessarily mean that the county clerk of the county would have authority to divest the presiding judge of his powers as presiding judge and designate an associate judge of the county to be the presiding judge. It is our opinion that this statute does not authorize the county clerk to execute any such power.

Section 2493, supra, was in its original form enacted in 1825 and has been on the statute books of this State since

that time. It has been changed slightly since it was originally passed but, as a whole, the statute has remained about the same. Of course it is a rule of law that in the construction of statutes the person construing such statute should attempt to arrive at the intention of the Legislature in passing the particular provision in question. *Thompson v. City of Lamar*, 17 S. W. (2d) 960, 322 Mo. 514; *City of St. Louis v. The Senter Commission Company*, 85 S. W. (2d) 21, 337 Mo. 238; *Graves v. Purcell*, 85 S. W. (2d) 543, 337 Mo. 574.

We feel that the intention of the Legislature in passing such a provision was to enable a county court to transact business when one of the judges was absent, and that in view of the fact there would be only two judges and that there might be the possibility of a tie vote on some matter presented to them, that the giving to the presiding judge of the power to override the vote of the other judge was for the purpose of permitting the two judges to arrive at some definite judgment. However, we do not feel that this section of the statute was passed by the Legislature with the intention that the county clerk would be able to divest the presiding judge, who was present, of his authority and appoint another judge in his stead to act as presiding judge. Our opinion in this matter necessarily means that we feel that Section 2493, supra, in speaking of but two judges sitting, means two associate judges. It appears clear that if two associate judges are sitting and the presiding judge is absent, that the county clerk under this statute has authority to designate one of such judges as the presiding judge in order that the business of the county may be transacted. However, we do not feel that he has such power where the presiding judge, who has been duly elected by the people in the county, is present.

Conclusion

Therefore, it is the opinion of this department that Section 2493, R. S. Mo. 1939, cannot be construed in such manner as to give the county clerk the authority to designate one of the associate judges as presiding judge in the presence

Hon. J. F. Newton

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January 20, 1944

of the presiding judge and one associate judge.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG