

MAGISTRATE COURTS : Magistrate Courts law under New Con-
stitution will not become effective
JUSTICES OF THE PEACE : until July 1, 1946, unless sooner
implemented by legislation.

April 6, 1945



Honorable David E. Impey
Prosecuting Attorney
Texas County
Houston, Missouri

Dear Mr. Impey:

This will acknowledge receipt of your letter
of March 31, relative to the following:

"I should like your opinion upon
the questions:

"(1). Is there now a Magistrate
Court of Texas County?

"(2). In the event a Justice of
the Peace dies or resigns (If the
Probate Judge of this County is now
vested with the powers of Judge of
the Magistrate Court or after we do
have a Magistrate Court if there is
not one now in this County), does
the office of Justice vacated by such
death or resignation cease to exist,
and is the County Court without power
to appoint one to fill out the unex-
pired term?"

Section 21 of Article V of the New Constitution
provides as follows:

"The general assembly shall provide
for the administration of magistrate
courts consistent with this Consti-
tution."

Texas County having a population of less than
30,000 persons, the Probate Judge would become the Judge
of the Magistrate Court when provided for by the Legis-
lature. In our opinion, the office of Justice of the Peace

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in your county will continue until legislation on the Magistrate Court is passed by the Legislature. The applicable sections of the New Constitution are as follows:

Section 2 of the Schedule of the New Constitution provides:

"All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

Section 4 of the Schedule of the New Constitution provides:

"All courts of common pleas now existing, the St. Louis courts of criminal correction, and all circuit court circuits as now established, shall continue until changed or abolished by law. The justices of the peace shall continue to hold their offices and receive the emoluments thereof until their terms of office expire, upon which their records shall be transferred to the magistrate courts."

CONCLUSION.

It is, therefore, the opinion of this Department that notwithstanding the effective date of the New Constitution being March 30, 1945, that:

- 1) There is now no Magistrate Court in Texas County, as Magistrate Courts must first be provided for in the counties by the Legislature, and,
- 2) Under the provisions of Section 4 of the Schedule of the New Constitution, the Justices of the Peace who were in office on March 30, 1945, will continue in office until the end of their terms. If a vacancy should occur in said offices prior to July 1, 1946, the same could be filled under the provisions of Section 2527, R.S. Mo. 1939. On July 1, 1946, the office of the Justice of the Peace will automatically

Honorable David E. Impey

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cease except as to those Justices who were in office on March 30, 1945, and if a vacancy should occur in any of the latter offices after July 1, 1946, same could not be filled.

Respectfully submitted,

R. WILSON BARROW
Assistant Attorney-General

APPROVED:

J. E. TAYLOR
Attorney-General

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