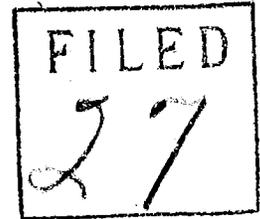


*New Leon. Sec 25*  
*Art V*

PROBATE JUDGES: Probate Judge shall be licensed to practice law in this state, except that probate judges in office at the time of the adoption of the Constitution of 1945, may succeed themselves without being so licensed.

January 2, 1946.



Honorable Melvin Englehart  
Prosecuting Attorney  
Fredericktown, Missouri

Dear Sir:

Receipt of your recent request regarding Section 25, Article V, Constitution of Missouri, 1945, is hereby acknowledged, which reads as follows:

"According to the above described Section of the Constitution, it is provided that 'Probate Judges shall be at least 25 years and Magistrates at least 22 years of age. Every judge and Magistrate shall be licensed to practice law in this State, except that Probate Judges now in office may succeed themselves as Probate Judges without being so licensed.'

"Under the above provision is a person who formerly held the office of Probate Judge but is now not in office eligible to hold the office of Probate Judge in a County under 12,000 population?"

Section 25, Article V, Constitution of Missouri, 1945, reads in its entirety as follows:

"Judges of the supreme court and courts of appeals shall have been citizens of the United States for at least fifteen years, and qualified voters of this state for nine years next preceding their selection. Such judges shall be at least thirty years of age but shall not continue to hold office after attaining seventy five years of age. Judges of the court of appeals

shall be residents of the district of their court. Circuit judges shall have been citizens of the United States for at least ten years, and qualified voters of this state three years next preceding their selection, and be not less than thirty years of age and residents of the circuit. Judges of probate and magistrate courts shall be qualified voters of this state, and residents of the county. Probate judges shall be at least twenty five and magistrates at least twenty two years of age. Every judge and magistrate shall be licensed to practice law in this state, except that probate judges now in office may succeed themselves as probate judges without being so licensed, and except that persons who are now justices of the peace, or who have heretofore been justices of the peace in this state for at least four years, shall be eligible to the office of magistrate without being so licensed." (Underscoring ours.)

It is a well known rule of constitutional construction that "the expression of one thing is the exclusion of another," which rule is found most recently in the case of *State v. Smith*, 111 S. W. (2d) 513, l. c. 514.

By expressing the general proposition that every judge and magistrate shall be licensed to practice law in this state the framers of the Constitution have excluded those who are not so licensed. Exception is made with regard to those probate judges who are now in office so that they may succeed themselves as probate judges without being so licensed. Certainly if one is not in office he may not succeed himself as is stipulated in this provision.

We note that in the sentence subsequent to the one we are here considering, provision is made with regard to those who are now justices of the peace, "or who have heretofore been justices of the peace in this state for at least four years, shall be eligible to the office of magistrate without being so licensed." However, no such provision is made regarding probate judges. If it had been the intention of the framers of the Constitution that former probate judges who are not licensed to practice law in this state should be able to hold the office of probate judge again they would have provided similarly for that occasion.

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The present Constitution was adopted February 27, 1945, and unless a probate judge was in office on that date he must, in order to hold office of probate judge after that time, be licensed to practice law in this state.

Conclusion

It is, therefore, the opinion of this department that under Section 25, Article V, Constitution of Missouri, 1945, a probate judge must be licensed to practice law in this state, except that those probate judges who were in office at the time of the adoption of the present Constitution may succeed themselves as probate judge without being so licensed. A person otherwise qualified, who formerly held the office of probate judge but who is not licensed to practice law in this state and who was not in office at the time of the adoption of the new Constitution, is not eligible to hold the office of probate judge.

Respectfully submitted,

J. MARTIN ANDERSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

JMA:EG