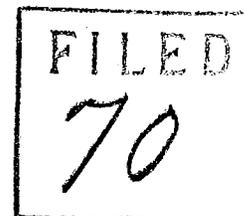


MAGISTRATE COURTS: Board of Aldermen of St. Louis has the power to provide for additional employees for the Magistrate Court of the City of St. Louis.

January 8, 1947



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Honorable Alroy S. Phillips
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Dear Sir:

We hereby acknowledge receipt of your request for an opinion of this department relative to the question of whether or not the Board of Aldermen of the City of St. Louis has the power to pass an ordinance providing for employees for the Magistrate Court of the City of St. Louis in addition to clerks and deputy clerks provided for by Senate Bill 239 of the 63rd General Assembly.

Senate Bill 239 provides for the appointment by the court, in banc, of a chief clerk and not more than two deputy clerks and allows each magistrate to appoint one deputy clerk. There is no provision for the appointment of additional employees but Section 2 of this bill provides in part as follows:

"* * * and all the provisions of general law applicable to magistrates, their courts and officers, shall be applicable to the courts, magistrates and officers provided in this act except so far as inconsistent therewith."

Senate Bill 207 of the 63rd General Assembly applies to magistrate courts generally. Therefore, all the provisions of this bill that are not inconsistent with Senate Bill 239 will apply to the Magistrate Court of the City of St. Louis. Senate Bill 239 is silent on whether or not the Board of Aldermen may hire additional employees, while Senate Bill 207 provides that additional employees may be hired if they find the need exists. In the case of *St. Louis v. Klausmeier*, 213 Mo.

119, the Court stated at l. c. 127:

"* * * In order to be a conflict of any kind, two things must of necessity exist, and when it is contended that there is a conflict between two laws both must contain either express or implied provisions which are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there can be no conflict between them."

Applying the above reasoning, Senate Bill 207 and Senate Bill 239 are not inconsistent in relation to our problem, so, therefore, we must look to Senate Bill 207 to determine if the Board of Alderman may provide for the hiring of additional employees. Section 21 of Senate Bill 207 provides in part as follows:

"* * * The total salaries of clerk, deputies and other employees paid by the state shall in no event exceed the annual amount fixed in this act for clerk and deputy clerk hire of such courts, provided, that in any county where need exists, the county court is hereby authorized, at the cost of the county, to provide such additional clerks, deputy clerks or other employees as may be required. * * *"

It will be noted that the second phrase in the above sentence is preceded by the words "provided, that." At first blush it would seem that the second phrase is a proviso and hence a limitation or exception to the preceding phrase. However, the courts have held that the word "provided" is sometimes used in the conjunctive sense and that this word alone will not make a phrase a proviso. We quote from Mitchell Castillo v. State Highway Commission of Missouri, 312 Mo. 244, l. c. 269:

"However, use of the word 'provided' does not in and of itself convert the words following into a 'proviso' in the strict legal sense. The word may be

used in the conjunctive sense and precede an independent out-and-out grant of power. In Georgia Banking Co. v. Smith, 128 U. S. 174, at page 181, it is said: 'The general purpose of a proviso, as is well known, is to except the clause covered by it from the general provisions of a statute, or from some provisions of it, or to qualify the operation of the statute in some particular. But it is often used in other senses. It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them to precede their proposed amendments with the term "provided," so as to declare that, notwithstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction "but" or "and" in the same place, and simply serving to separate or distinguish the different paragraphs or sentences.'

It seems clear to us that the second phrase does not limit the first phrase but merely is an additional discretionary power given to the county courts, or, as in our case, the Board of Aldermen of the City of St. Louis.

It has been suggested that Section 22 of Senate Bill 207 prohibits the Board of Aldermen from hiring additional employees, except in the case where an additional magistrate has been authorized by the circuit court. Section 22 reads in part as follows:

"Salaries of clerks, deputy clerks and employees provided for in the last preceding section shall be paid by the state within the limits herein provided upon requisition filed by the judge of the magistrate court; except that the salaries of clerks, deputy clerks and employees of additional magistrates whose offices are created by order of the circuit court as provided in Section 1 of this act shall

be paid by the county as the salaries of such magistrates are required to be paid."

It is our opinion that the General Assembly merely intended by the above exception that the money paid by the state would be used exclusively for paying clerks and employees of magistrates paid by the state and not to prohibit the Board of Aldermen from providing for the hiring of additional employees as the need exists.

Conclusion

Therefore, it is the opinion of this department that the Board of Aldermen of the City of St. Louis has the power to pass an ordinance providing for clerks, deputy clerks and employees for the Magistrate Court of the City of St. Louis in addition to the clerks and deputy clerks provided for by Senate Bill 239 of the 63rd General Assembly.

Respectfully submitted,

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APPROVED:

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