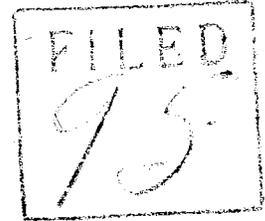


COUNTY COURT: When only two district judges are present at county court meeting and they are unable to agree on any matter submitted to them, the clerk is to designate one district judge as presiding judge and his decision is the decision of the court. When the presiding judge and one district judge are present and they disagree, the decision of the presiding judge is the decision of the court.

September 17, 1947



Honorable H. L. C. Weier
Prosecuting Attorney
Jefferson County
Festus, Missouri

Dear Sir:

This is in reply to your letter of recent date, requesting an official opinion of this department, and reading, in part, as follows:

"Section 2493 Revised Statutes of Missouri 1939 provides that '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.' In this particular instance it appears that the clerk did not designate the presiding judge since Judge Becker, who was sitting at the time, was the duly elected presiding judge of this county. The minutes do show that the decision of Judge Becker being the presiding judge, became the decision or judgment of the court. It is my interpretation of the law that where only two judges are sitting and one is the presiding judge, then if there is a disagreement the decision of the presiding judge is the decision of the court, but if two district judges are sitting in the absence of the presiding judge, then the clerk of the county court must designate which of the two district judges is to be the presiding judge and carry the decision of the court. Mr. Sweet is in disagreement with this opinion and has requested that I obtain your opinion in this matter.

"I would appreciate it if you would inform me as to your construction of Section 2493 with regard to this matter."

Section 2475, R. S. Mo. 1939, provides as follows:

"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 is a well established rule of statutory construction that in arriving at the intent of the Legislature in enacting a statute cognate statutes are to be considered in determining such legislative intent. In the case of *Darlington Lumber Co. v. Railroad*, 216 Mo. 658, l. c. 672, the Supreme Court of Missouri said:

"Nor should we give the statute such construction as would make it unreasonable and absurd, for it is to be presumed that such was not the legislative intent. And after all the legislative intent and purpose is the thing to be sought, when there is doubt as to the meaning of the language used. This doubt may arise from the statute itself or from cognate statutes, which must be considered therewith.

* * *

" * * * The inartificial manner in which many of our statutes are framed, the inaptness of expressions frequently used, and the want of perspicuity and precision not infrequently met with, often require the court to look less

at the letter or words of the statute than at the context, the subject-matter, the consequences and effects, and the reason and spirit of the law, in endeavoring to arrive at the will of the law-giver."

Since Section 2475, quoted supra, provides that a presiding judge shall be elected by the qualified voters of the county, it is our view that such presiding judge is to be the presiding judge of the county court at all times when he is present at the meetings of such court, and therefore that the provision of Section 2493, R. S. Mo. 1939, providing "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," refers only to those meetings of the county court at which only the two district judges are present, and does not refer to a meeting of the county court when the presiding judge and one district judge are present. When only two district judges are present and they disagree, one of the district judges is to be designated as presiding judge by the clerk of the court, and the decision of such judge is to stand as the judgment of the court. When only the presiding judge and one district judge are present, no designation of the presiding judge by the clerk is necessary since the decision of the presiding judge of the court will stand as the judgment of the court.

Another rule of statutory construction is that the actual construction given a statute for a long period by those charged with its administration, while not conclusive, is entitled to great weight in construing such a statute. In the case of *State ex rel. Chick v. Davis*, 273 Mo. 660, the Supreme Court of Missouri said, 1. c. 667:

" * * * Though the statute be not clear, its ambiguity opens the way for the rule that the actual construction given it for a long period by those charged with its administration, the supervising courts and the Legislature acquiescing therein, is regarded as strong evidence of its true meaning."

Since the county courts of this state have long given Section 2493 the construction that the clerk is to designate a presiding judge only in cases where only the district judges are present, we believe it is clear that such construction should be followed in this case.

Honorable H. L. C. Weier

-4-

CONCLUSION

It is the opinion of this department that when only the presiding judge and one district judge are present at a meeting of the county court, the decision of the presiding judge shall stand as the judgment of the court.

It is further the opinion of this department that when only the two district judges of the county court are present and they disagree in any matter submitted to them, it is the duty of the county clerk to designate one of such district judges as the presiding judge, and the decision of the presiding judge so selected by the clerk shall stand as the judgment of the court.

Respectfully submitted,

C. B. BURNS, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:HR