

MAGISTRATES: Justices of the peace qualified for ap-
JUSTICES OF THE PEACE: pointment as additional magistrate.

August 2, 1948

Honorable L. Madison Bywaters
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Dear Mr. Bywaters:

This is in reply to your recent letter requesting the opinion of this department on the following question:

"Is a person who was a Justice of the Peace on February 27, 1945, or who had heretofore been a Justice of the Peace in this State for at least four years, eligible to appointment as an additional Magistrate in counties of the third class in which the population is over 30,000?"

The provision for the appointment of additional magistrates is found in the act of the 63rd General Assembly, known as the Magistrate Law, Laws of Missouri, 1945, page 765, Section 1, as modified by the decision of the Missouri Supreme Court in State ex rel. Randolph County v. Walden, Special Judge, 206 S.W. (2d) 979. Such additional magistrates must possess the same qualifications as provided by law for regularly elected magistrates.

The qualifications required of magistrates are set out in the Constitution, Article V, Section 25, as follows:

"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

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peace in this state for at least four years, shall be eligible to the office of magistrate without being so licensed."

This constitutional provision is implemented by Section 3 of the above act by the 63rd General Assembly, which reads:

"Each judge of magistrate court shall be a qualified voter of this state, at least twenty-two years of age, and a resident of the county for at least nine months, next preceding his election, and shall be licensed to practice law in this state; except that, in counties of 30,000 inhabitants or less, a probate judge who succeeds himself as probate judge may serve as judge of the magistrate court without being so licensed, and except that persons who were on February 27, 1945, 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 licensed to practice law. No magistrate shall receive any other or additional compensation for any other public service or practice law or do law business while he is magistrate."

These sections require judges of the magistrate court to be licensed to practice law in this state but provide an exception to this effect: "persons who were on February 27, 1943, 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 licensed to practice law."

There are no restrictions in either the Constitution or the statutes comprising the Magistrate Law limiting this provision with regard to the time such persons shall be eligible for the office of such magistrate. The law is clear, and the intent of the Legislature seems evident that persons who were justices of the peace on February 27, 1945, or who have been justices of the peace for at least four years sometime during their lifetime, are eligible for the office of magistrate without being licensed to practice law in this state, provided they comply with all other legal requirements. It is well settled in Missouri that when the wording of such constitutional and statutory provision is plain and unambiguous it must be given effect as written.

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We are aware of the limited reliance which must be placed on the Debates of the Constitutional Convention, however they are of value in this case and entitled to some weight. (State ex rel. Randolph County v. Walden, supra.) At page 2871 of the Debates of the 1943-1944 Constitutional Convention of Missouri that portion of Article V, Section 25 of the Constitution, which is under consideration here, was discussed as follows:

"MR. ALLEN: Was it the intention of the Committee, Mr. Robison, in the use of these words in lines 17 and 18 -- 16, 17, 18 and 19, quote 'except that persons who are now justices of the peace, or who have heretofore been justices of the peace for at least four years, shall be eligible to the office of magistrate' -- was it the intention of the Committee that those words 'for at least four years' meant four years prior to the adoption of this Constitution or prior to the adoption of the time this constitutional provision went into effect? I merely ask that for the record. Or was it the intention of the Committee that anyone who in his lifetime had served four years as a justice of the peace would in the future be eligible for election to that office even though he was not licensed to practice law?

"MR. ROBISON (OF DEKALB): Mr. Allen, I could give you my construction on that. However, I am not the author of that Section. Senator Phillips from St. Louis offered, I think, that part of the Section and I would rather he give his intention.

"MR. ALLEN: I beg your pardon. May I inquire from Senator Phillips? Did you hear my question, Senator?

"MR. PHILLIPS (OF ST. LOUIS CITY): As I understood your question, why yes, to the last part of it.

"MR. ALLEN: That is that anyone who had ever served as a justice of the peace at any time within his lifetime, for a period of four years, whether or not it was immediately preceding the adoption of this Section by the people would be eligible to be elected a magistrate without being a licensed attorney?

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"MR. PHILLIPS (OF ST. LOUIS CITY): That's right, and the reason was that we considered four years experience as a justice of the peace would give the man sufficient qualifications to make up for the lack of a license to practice law."

An examination of the above excerpt from the record discloses that the meaning of the phrase in question was clearly stated by its proponents as we have concluded above. It was clearly indicated there that any person who at any time in his lifetime served four years as a justice of the peace was eligible after the adoption of the Constitution or in the future for the office of magistrate, the reason being that four years experience as a justice of the peace would qualify a person for the office of magistrate regardless of his lack of a license to practice law.

CONCLUSION

In view of the foregoing, it is the opinion of this department that a person who was a justice of the peace on February 27, 1945, or who has heretofore been a justice of the peace in this state for at least four years, is eligible for appointment as an additional magistrate under the provisions of the Laws of Missouri, 1945, page 765, Section 1.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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