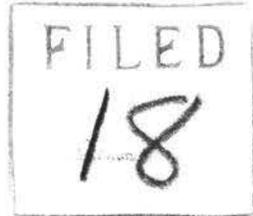


January 22, 1957



Honorable William A. Collet
Prosecuting Attorney Jackson County
415 East Twelfth Street
Kansas City, Missouri

Dear Mr. Collet:

We are in receipt of your letter of the eleventh of this month, in which you ask this office for an opinion answering three specific questions pertaining to the issuance of identification cards to non-paid persons designated as "special" investigators for your office.

We shall endeavor to answer your questions to the best of our ability but do so in this letter instead of in the nature of an official published opinion. Your questions do not seem to be about problems prevalent in other parts of the state.

Your questions are as follows:

- No. 1. "Under the provisions of Sections 56.150 to 56.160, as well as other provisions relating to Prosecuting Attorneys in general, is there any statutory authority for the appointment of 'special' investigators, or other employees who receive no compensation from the County?"

We are definitely of the opinion that there is no such authority. Such office as special investigator would definitely be a public office. Section 56.150 authorizes you to appoint assistants, stenographers, clerks and investigators when approved by the judges of the circuit court. Notice that there are no other officers authorized under that section. The number of investigators, as well as the number of other help mentioned, shall be such as is determined by the judges "to be

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necessary." The section also states that the investigators shall be paid in the same manner and from the same funds as the prosecuting attorney. Section 56.160, Cumulative Supplement 1955, provides for the investigators to be paid \$3600.00 per year.

In the case of State v. Truman, 64 S.W. 2d 105, 106, it is said that numerous criteria have been resorted to in determining whether a person is an officer. It was said that it is the duty of the office and the nature of the duty that makes one an officer, and not the extent of the authority. The court in that case quoted from Mechem on Public Officers, as follows:

" 'A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer.' "

In the case of State v. Meriwether, 200 S.W. 2d 340, the court said, l.c. 341:

"It is not possible to define the words 'public office or public officer.' The cases are determined from the particular facts, including a consideration of the intention and subject-matter of the enactment of the statute or the adoption of the constitutional provision. State ex inf. McKittrick, Attorney General v. Bode, 342 Mo. 162, 113 S.W. 2d 805, loc.cit.806."

Notice in the case of State v. Smiley, 263 S.W. 825, 826, it is held that "It is well settled that only the

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Legislature has the power to create a public office (other than a constitutional office) as an instrumentality of government, and this power it cannot delegate."

From the foregoing, we conclude that the office of special investigator, regardless of the duties which you might assign such a designated individual, would be a public officer and, further, that since the Legislature has not authorized you to create such you have no power or authority to do so.

Your question No. 2 is:

"If there is no statutory authority for such appointment, is the displaying of identification cards, badges and other indicia of appointment to such office illegal and in violation of the criminal laws of the State of Missouri?"

Without more facts we can't say definitely what statute might be violated by the displaying of the identification cards or badges. From the facts as you have given them, that some of these holders "obtain certain honorariums given to members of the Police Department and other law enforcement agencies, such as free admission to athletic contests, special discounts in stores, as well as for other purposes," there seems to us to be a strong possibility that there would be a violation of Section 562.180, to wit, the impersonating of a peace officer.

Your third question is:

"If there is no statutory authority for such appointments, would the holders of such identification cards and badges obtained pursuant thereto, be exempt from the provisions of Section 564.610, prohibiting the carrying of concealed weapons?"

The answer to this we think is, of course, No. Section 564.610 exempts only the "legally qualified" sheriffs,

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police officers and "other persons" whose bona fide duties require them to execute process, either civil or criminal, make arrests, or aid in conserving the public peace. Such persons as you indicate certainly could not be some of the "other persons" who were "legally qualified" and certainly their duties seem to be nil.

These answers, which I approve, were written by my assistant, Russell S. Noblet.

Very truly yours,

John M. Dalton
Attorney General

RSN:lc