

COUNTY OFFICE HOURS: Under the terms of House Bill No. 534 of the 70th
SUPREME COURT RULES: General Assembly, truly agreed to and finally
COUNTY COURTS: passed, it is not within the power of the county
court of a third class county to authorize any
county offices to be open only five days a week.
Neither does House Bill No. 534 annul or amend

Rule 31.05 of the Rules of the Supreme Court of Missouri which states,
in effect, that the clerk's office of every court set forth in Article
V, Section 1 of the Constitution of Missouri, 1945, shall be open
during business hours on all days except Sundays and legal holidays
with the clerk or a deputy clerk in attendance.

September 23, 1959

FILED
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Honorable Phil Hauck
Prosecuting Attorney
Grundy County
924 Main Street
Trenton, Missouri

Dear Mr. Hauck:

This is in response to your letter of August 11, 1959, which
we quote as follows:

"This request for an opinion is submitted on
behalf of the County Court of Grundy County,
Missouri.

"House Bill No. 534 repeals Section 49.265
R.S.Mo., 1957 Sup. That bill reads in part
as follows:

'And in all counties of classes three
and four by order entered of record,
may authorize all county offices, ex-
cept the Sheriff's office, to be open
not more than five and a half days
each week.'

"Under the terms of the above legislation,
is it within the power of a county court of
a third class to authorize all county of-
fices, except the Sheriff's office, to be
open only five days per week?"

We are enclosing two opinions written previously by this of-
fice, to Clinton Lindley, Nevada, Missouri, January 10, 1947,
which concludes that county officials were not authorized to close

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and be absent from their offices during the reasonable business hours of the week as observed by the community, and to James G. Lauderdale, Lexington, Missouri, March 15, 1951. These opinions were written prior to the enactment of House Bill No. 534 of the 70th General Assembly, Truly Agreed to and Finally Passed. It is to be noted from the 1947 opinion that the authority did not rest with the county courts to close the various county offices at the will of those courts. Therefore, we believe that in enacting the present legislation the General Assembly considered the law as it existed previously.

We quote Section 49.265, Vernon's Annotated Missouri Statutes, July 1959 pamphlet, House Bill No. 534, 70th General Assembly, Truly Agreed to and Finally Passed:

"The county court in all counties of class two, by order entered of record, may authorize all county offices, except the sheriff's office, to be open not more than five days each week, and in all counties of classes three and four by order entered of record, may authorize all county offices, except the sheriff's office, to be open not more than five and one-half days each week. The county court, after entering such an order, may require any office to be open six days a week when public convenience requires. The authorization by the county court in counties of the third and fourth class to close such offices must be published three times in the county newspapers and such authorization to be signed by the county court."

(See amendments)

We are confronted with the situation in which by the creation of the various county offices it is a requirement of the laws of Missouri that these county offices remain open for business virtually every working day of the week. We now see that by House Bill No. 534, supra, the General Assembly of Missouri attempts to authorize the county court in all counties of classes three and four to authorize all county offices, except the sheriff's office, to be open not more than five and one-half days each week. We do not believe that this is an authorization to the county court to authorize county offices to be open less than five and one-half days each week. We believe that it would be inconsistent with the general law and with the reasonable requirements of our state business to assume that the Legislature intended by House Bill No. 534, supra, to authorize county courts to have complete control of

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the business hours of the county offices. This is evidenced by the manner in which House Bill No. 534 was amended within the General Assembly prior to its final passage. In the perfected House Bill No. 534 the pertinent sentence reads as follows:

"The county court in all counties of classes two, three and four by order entered of record, may authorize all county offices, except the sheriff's office, to be open not more than five days each week."

Then by legislative procedures the bill was amended to its present form. Had the Legislature wished the county courts to have complete control of the business hours of the county offices it would have been of no significance that the authorized time be five days or five and one-half days or two days. The logical construction to be placed upon this legislation is that it is intended to be a specific authorization which only authorizes all county offices within a third and fourth class county, and excepting the sheriff's office, to be open not more than five and one-half days each week unless the county court deems that the public convenience requires those offices to be open six days a week.

However, we come to the question with respect to whether House Bill No. 534, supra, pertains to all offices within the county, aside from the sheriff's office.

Article V, Section 5, Constitution of Missouri, 1945, reads:

"The supreme court may establish rules of practice and procedure for all courts. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended by a law limited to the purpose."

Rule 31.05, Rules of the Supreme Court of Missouri:

"The courts shall be deemed always open for the purpose of filing any pleading, motion, affidavit or other proper paper in every criminal case, of issuing and returning all mesne and final process therein, and making

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and directing all interlocutory motions, orders and rules. The clerk's office of every court shall be open during business hours on all days except Sundays and legal holidays, with the clerk or a deputy clerk in attendance. All motions and applications filed in the clerk's office for issuing meane process and subpoenas for witnesses and for issuing final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court, under these Rules, are grantable as of course by the clerk; but his action when taken may be suspended, altered or rescinded by the court upon good cause shown." (Emphasis ours.)

You will note from Article V, Section 5, of the Constitution, supra, that the Supreme Court of Missouri is authorized to establish the rules of practice and procedure for all courts. Consistent with this rule, the Supreme Court of Missouri has promulgated Rule 31.05, supra, to the effect that the clerk's office of every court shall be open during business hours on all days except Sundays and legal holidays. It is also to be noted from Article V, Section 5, of the Constitution that any rule of the Supreme Court pertaining to practice and procedure may be annulled or amended by a law limited to the purpose.

We now wish to bring your attention to Article V, Section 1, which we quote:

"The judicial power of the state shall be vested in a supreme court, courts of appeals, circuit courts, probate courts, the St. Louis courts of criminal correction, the existing courts of common pleas, magistrates courts, and municipal corporation courts."

You will observe that Section 1, above, sets forth the courts in Missouri in which the judicial power of the state shall be vested. It would, of necessity, be these courts for which the Supreme Court is authorized to establish the rules of practice and procedure. Therefore, it is our opinion that Rule 31.05 applies to the offices of the clerks of the courts set forth in Article V, Section 1, supra. In the absence of any legislation which is limited to the purpose of annulling or amending Rule 31.05, it would appear that the offices of the clerks of the courts set forth in Article V, Section 1, supra, are not authorized to close except on Sundays and legal holidays.

It is the opinion of this office that House Bill No. 534,

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supra, is not a law limited to the purpose of annulling or amending Supreme Court Rule 31.05. House Bill No. 534 does not mention the Supreme Court Rules. Neither does it specifically mention the offices to which the Supreme Court Rule has reference. This office believes that had it been the purpose of the Legislature to limit the law to the annulling or amending of Supreme Court Rule 31.05 it could and would have done so by reference to the rule or to the specific offices.

CONCLUSION

It is the opinion of this office that under the terms of House Bill No. 534 of the 70th General Assembly, truly agreed to and finally passed, it is not within the power of the county court of a third class county to authorize any county offices to be open only five days a week. Neither does House Bill No. 534 annul or amend Rule 31.05 of the Rules of the Supreme Court of Missouri which states, in effect, that the clerk's office of every court set forth in Article V, Section 1, of the Constitution of Missouri, 1945, shall be open during business hours on all days except Sundays and legal holidays with the clerk or a deputy clerk in attendance.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Yours very truly,

JOHN M. DALTON
Attorney General

Enclosures (2)

JBS:mc