

SOCIAL SECURITY:  
PROBATE COURT:  
CITY OF ST. LOUIS:

Probate judge and employees of probate court, City of St. Louis, are under the political subdivision of the City of St. Louis under the provisions of S.C.S.S.B. No. 3. *and may be incorporated in any agreement between the State Agency and City.*  
July 25, 1951

7-27-51

Mr. Adolph Thym  
Clerk of the Probate Court  
City of St. Louis  
St. Louis, Missouri



Dear Sir:

This will acknowledge receipt of your request for an official opinion which reads:

"Senate Bill No. 3, providing old-age and survivors insurance coverage for certain officers and employees of the State and local governments, was recently approved by the Governor.

"The probate court of the City of St. Louis follows Sections 483.580 to 483.600, R.S. Mo. 1949 in its operation, solely on a fee basis. The procedure by the clerk of said court is to charge and collect, from the estates or parties requiring the services of the probate judge, clerk or court, fees which are deposited to the clerk's account, and at the end of each month, are reported to the City Comptroller and paid as reported to the City Treasurer. During the course of a year, semi-monthly payrolls are requisitioned out of the money so paid, and too, as is necessary, expenses for supplies and office equipment. Annually, the clerk reports a summation, and whatever excess fees remain are paid by the City Treasurer to the Board of Education for the school fund of this City. Precedent established by cases defines the probate court as a state office, and, as to the judge, clerk and deputy clerks, state officers.

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"In view of the foregoing, will you kindly advise me if the judge and employees of the St. Louis probate court are entitled to participate in the benefits and do they come under the act, and what procedure will be necessary to include the probate judge and staff under the law for the purpose of the benefits provided therein, and if there is action required by the judge or clerk to effect that purpose."

Section 16, Article V of the Constitution of Missouri, 1945, provides that there shall be a probate court in each county and specifically designates the general duties of said court, and reads:

"There shall be a probate court in each county with jurisdiction of all matters pertaining to probate business, to granting letters testamentary and of administration, the appointment of guardians and curators of minors and persons of unsound mind, settling the accounts of executors, administrators, curators and guardians, and the sale or leasing of lands by executors, administrators, curators and guardians, and of such other matters as are provided in this Constitution."

Section 17 of this same article provides that the probate courts shall be courts of record, and reads:

"Probate courts shall be courts of record and uniform in their organization, jurisdiction and practice, except that a separate clerk may be provided for, or the judge may be required to act ex officio as his own clerk."

Section 481.010, RSMo 1949, creates the probate court in the City of St. Louis and all other counties of the state, and reads:

"A probate court, which shall be a court of record, and consist of one judge, is hereby established in the city of St. Louis, and in every county in this state."

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Section 26, Article V of the Constitution of Missouri, 1945, provides that appellate and probate courts shall appoint their own clerks. Section 481.090, RSMo 1949, is a mandate that the probate court shall be governed by the statutes, and reads:

"Probate courts, in the exercise of their jurisdiction, shall be governed by the statutes in relation to administration, to guardians and curators of minors and persons of unsound mind and such laws as may be enacted defining and limiting the practice in said courts."

Furthermore, Section 481.220, RSMo 1949, fixes the salary of the probate court. Section 483.585, RSMo 1949, provides that the salary of the probate judge and all employees shall be paid from fees of the office and shall not in any year exceed such fees. Section 481.230, RSMo 1949, requires that the probate judge, before entering upon his official duties, shall give a bond, and Section 481.060, RSMo 1949, provides for a seal of the office.

There are a great many decisions in this state as to the definition of the term "state officer." Some of these definitions hold that even a prosecuting attorney or a sheriff of a county is a state officer. Another long line of decisions holds that in order to constitute a state officer the jurisdiction of such an officer shall be co-extensive with the boundaries of the state.

From the text of S.C.S.S.B. No. 3, we have come to the conclusion that the bill contemplates that an officer or employee to be employed by the state, political subdivision or instrumentality must receive pay from the respective state, political subdivision or instrumentality. It is quoted from the bill as follows: (Section 2, Subparagraph 2.)

"\* \* \* except that in making its first payment after the effective date of the agreement between the state and the federal security administrator the state shall pay to the Secretary of the Treasury contributions with respect to wages of covered state employees a sum equal to the amount which would have been due and payable had such agreement and this act been effective on January 1, 1951."

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Again, in Section 3, Subparagraphs (2) and (3):

"(2) To require its employees to pay (and for that purpose deduct from their wages) contributions equal to the amounts which they would be required to pay under section 4 subsection 1 if they were covered by an agreement made pursuant to section 2 subsection 1; and

"(3) To make payments to the Secretary of the Treasury in accordance with such agreement, including payment from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the provisions of this act."

And, in Section 4, Subparagraph 2:

"The contributions imposed by this section shall be collected by the state by deducting the amount of the contributions from wages paid, but failure to make such deductions shall not relieve the employee from liability for such contribution."

In regard to the agreement between the state agency and political subdivision or instrumentalities of the state or instrumentalities of political subdivisions, and again in contemplation of the employer being the person who pays the wages, the statute states in Section 5, Subsection 2, Subparagraph (3):

"It specifies the source or sources from which the funds necessary to make the payments required by subdivisions (1) and (2) of subsection 4 of this section are to be derived and contains reasonable assurance that such sources will be adequate for such purpose;"

In all references to the method of payment and withholding each shows without exception that the state, subdivision or instrumentality paying the employee is the employer. The act requires the comptroller, as the state agency, to be responsible for and to collect all of the payments made under the act. He does this directly from officers and employees of the state to whom he pays salaries and wages. This is done

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from subdivisions by direct contact with the subdivision. Section 6, Paragraph 1, establishes a special Fund to be known as the Contributions and in Paragraph 5 of that section it is provided.

"The state comptroller at the end of each quarter shall certify to the state treasurer the amount of the state's share of the contributions required to be paid to the federal agency on account of the officers and employees of each department, division, agency, or unit of state government whose services are covered by an agreement entered into under section 2. Thereupon the state treasurer shall immediately transfer such amounts from the proper funds from which the officers and employees were paid to the credit of the contribution fund."

The probate judge and the employees of the probate court are not paid by the comptroller or out of the state treasury. They are paid from probate fees collected by their court. The jurisdiction of the court is limited to the boundaries of the City of St. Louis. His appointment is in accordance with the court plan and is for the boundaries of the City of St. Louis.

In regard to the court decision on whether or not the probate judge is a state officer we quote from State ex rel. Rucker v. Hoffman, 313 Mo. 667, at l.c. 672:

"Our conclusion is that, when a circuit judge in his official capacity is made a party to a suit in the circuit court and an appeal is taken in such case and no other constitutional grounds giving this court appellate jurisdiction under Article VI, Section 12, exist, such judge cannot be regarded as a state officer within the meaning of said section of the Constitution and appellate jurisdiction in such case is vested in the appropriate court of appeals.

"It is therefore ordered that this case be transferred to the Kansas City Court of Appeals.

"All concur, except Graves, J., who dissents, and Otto, J., not sitting."

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The above rule is again set out in *Dietrich v. Brickey, Judge, et al.*, 37 S.W. (2d) 428, l.c. 429, as follows:

"The only provision of the Constitution that would appear to invest us with jurisdiction (article 6, section 12) reads: 'In cases where \* \* \* any State officer is a party.' However, we have construed the words 'state officer' as meaning such officers whose official duties are co-extensive with the boundaries of the state, excluding those officers whose functions are confined to counties and townships. *State ex rel. v. Ingram*, 317 Mo. 1141, 298 S.W. 37; *State ex rel. v. Dillon*, 90 Mo. 229, 2 S.W. 417; *State ex rel. v. Spencer*, 91 Mo. 206, 3 S.W. 410; *State ex rel. v. Bus*, 135 Mo. 325, 36 S.W. 636, 33 L.R.A. 616; *State ex rel. v. Higgins*, 144 Mo. 410, 46 S.W. 423; *Dahnke-Walker Milling Co. v. Blake*, 242 Mo. 23, 145 S.W. 438; *Nickelson v. City of Hardin*, 282 Mo. 198, 221 S.W. 358; *State ex rel. v. Hoffman*, 313 Mo. 667, 288 S.W. 16; *State ex rel. v. Offutt* (Mo. Sup.) 9 S.W. (2d) 595. By analogy and precedent it is evident that a county treasurer is not a state officer within the meaning of section 12 article 6, of the Constitution, so as to invest this court with jurisdiction by virtue thereof."

There is a conflict between the line of cases just cited and *State ex rel. Buchanan County v. John F. Imel*, 242 Mo. 293, at l.c. 301, wherein Brown, J., stated as follows:

"Judges of the probate court are not charged with the performance of any governmental functions of the counties for which they are elected; in fact, some of them do not have jurisdiction co-extensive with the counties where their offices are held. Their functions are to administer the laws pertaining to estates of deceased persons, minors and persons of unsound mind.

"From the context of said section 12 of article 9, supra, it will be seen that

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there is very little if any better reason for classifying probate judges as 'county officers' than for so designating judges of the circuit court when their circuits are composed of a single county.

"After a careful review of said section 12 of article 9 of the Constitution of Missouri, we are fully convinced that it was not intended to embrace or include judges of probate courts; and that in holding that it does embrace those officers, the case of Henderson v. Koenig, supra, is erroneous, and the same is therefore overruled."

It will be noted that these interpretations are in regard to different constitutional and statutory questions, and no definite rule has ever been established concerning whether or not a probate judge is a state or a county officer. It is, therefore, the opinion of this office that the position of a office must be considered in light of the interpretation of the constitutional or statutory question involved.

#### CONCLUSION

Therefore, it is the opinion of this department that the probate judge of the City of St. Louis and the employees of the probate court of the City of St. Louis are officers and employees of the City of St. Louis and may be incorporated in any agreement between the state agency under Senate Bill No. 3 and the City of St. Louis. Since the probate judge and the officers and employees of the probate court of St. Louis are not state employees, they are not at present covered under the provisions of S.C.S.S.B. No. 3.

Respectfully submitted,

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APPROVED:

  
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