

BOARD OF ELECTION
COMMISSIONERS:

Board of Election Commissioners of City
of St. Louis has authority to provide
for an additional magistrate district
by virtue of the 1950 census and is
vested with sole authority to create
such new district.

February 6, 1953



Honorable Paul C. Calcaterra, Chairman
Board of Election Commissioners
208 South 12th Street
St. Louis, Missouri

Dear Sir:

This office is in receipt of your request for an official
opinion. You state your opinion request as follows:

"At present the City of St. Louis has nine
Magistrate Districts. These were established
in 1946 on the basis of the 1940 United States
population census which was 816,048.

"Section 482.010, R. S. 1949, provides that
in Counties of 100,000 inhabitants or more
there shall be two Magistrates and one addi-
tional Magistrate for each additional 100,000
inhabitants, or major fraction thereof.

"The preliminary figures of the population of
the City of St. Louis under the 1950 United
States Census is 852,623. The question arises
whether the City is entitled to another Magis-
trate District. If so, does the Board of
Election Commissioners have sole authority in
establishing such new District, or, must hearing
be held to determine if redistricting is neces-
sary so that no district varies by more than
one-fourth from the quotient thereof as provided
by Section 482.040, R. S. 1949."

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The general provision in regard to magistrate courts as found in Chapter 482, Section 482.010, et seq., 1949, are applicable to magistrate courts in the City of St. Louis insofar as they are not inconsistent with specific provisions set forth in Section 482.220 and following.

Section 1.080, RSMo 1949, provides:

"Wherever the word 'county' is used in any law, general in its character to the whole state, the same shall be construed to include the city of St. Louis, unless such construction be inconsistent with the evident intent of such law, or of some law specially applicable to such city; and whenever, under the provisions of any law which shall be applicable to the city of St. Louis, as to the counties of this state, any act or duty shall be authorized or required to be performed by the clerk of the county court, such act or duty shall be performed by the register of the said city of St. Louis, so far as the same relates to any act or duty required to be performed in said city similar in character to that required of such county clerk in the respective counties of this state."

Section 482.040, RSMo 1949, by its language was specifically intended to apply to the City of St. Louis. Paragraph 5 of said section states:

"Forthwith after making the same, the board or boards of election commissioners, or if none, the county court, shall file the divisions or alterations and the names and descriptions of the districts with the county clerk of said county and with the circuit clerk in the city of St. Louis."

(Emphasis ours.)

Section 482.010, RSMo 1949, providing for the number of magistrates in each county follows Section 18, Article V, of the Missouri Constitution, and provides:

"* * *In counties of one hundred thousand inhabitants or more there shall be two magistrates and one additional magistrate for each additional one hundred thousand inhabitants, or major fraction thereof."

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The 1950 Census of Population, Advance Reports Series, PC-8, No. 24, published October 3, 1951 by the United States Department of Commerce, Bureau of Census, shows the population of St. Louis to be 856,796.

In answer to your question as to whether the City of St. Louis is entitled to another magistrate by virtue of this publication, we refer you to Section 1.100, RSMo 1949, which is as follows:

"The population of any political subdivision of the state for the purpose of representation or other matters including the ascertainment of the salary of any county officer for any year or for the amount of fees he may retain or the amount he shall be allowed to pay for deputies and assistants shall be determined on the basis of the last previous decennial census of the United States. For the purpose of this section the effective date of the 1950 decennial census of the United States shall be January 1, 1951, and the effective date of each succeeding decennial census of the United States shall be on January first of each tenth year after 1951."

(Emphasis ours.)

Therefore, by virtue of this section, the 1950 Census of Population may be used to determine the necessity for additional magistrates as provided in Section 482.010, RSMo 1949 and, the City of St. Louis is now authorized to have ten magistrates.

Constitutional and statutory provisions regulating the rights and duties of the board of election commissioners in regard to creating magistrate districts are as follows:

Article V, Section 19, Missouri Constitution of 1945 states:

"After each census of the United States the boards of election commissioners, or if none, the county courts, shall divide counties having more than one magistrate into districts of compact and contiguous territory, as nearly equal in population as may be, in each of which one magistrate shall be elected. * * *"

Section 482.040, RSMo 1949, paragraph 2, provides:

"In counties where under the last preceding decennial census of the United States or by order of the circuit court as provided by law,

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they are entitled to more than one magistrate, the board or boards of election commissioners, or if none, the county court shall on or before April 1, 1946, and thereafter within sixty days after such board or boards, or if none, the county court shall be officially informed that the duty has arisen for them to divide such county into magistrate districts, divide such counties having more than one magistrate into districts of compact and contiguous territory, as nearly equal in population as may be, in each of which one magistrate will be elected, who shall be a resident of the district in which he is elected."

It is noted that these provisions direct the board of election commissioners, or if none, the county courts to divide counties into magistrate districts without regard to public hearing. Section 482.040, RSMo 1949, paragraph 4, provides:

"On its own motion, or on petition of five hundred or more qualified voters of the county, the board or boards of election commissioners, or if none, the county court shall hold a public hearing to determine the necessity for altering any such district. The population of the county shall be divided by the number of magistrate districts in the county, and proof at such hearing that by the last decennial census of the United States taken after the last redistricting was made the population of any one district varies from the quotient by more than one-fourth thereof shall be prima facie evidence that the administration of justice requires that such redistricting be made. If the board or boards of election commissioners, or if none, the county court shall find that the administration of justice requires such redistricting to be made, they shall by an order entered of record redistrict the county into magistrate districts in the manner prescribed by the constitution of such districts."

(Emphasis ours.)

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It is believed that this section providing for a public hearing, with which you are concerned, pertains only to altering existing districts and does not apply when by the last decennial census a county is entitled to a change in the number of magistrates.

We are concerned here with creating an additional magistrate district and it is believed that the sole authority to create such new district is vested in the board of election commissioners as provided by Section 19, Article V, of the Constitution of Missouri and Section 482.040, RSMo 1949.

Although Article V, Section 19, Missouri Constitution 1945, provides that after each census of the United States, the boards of election commissioners shall divide counties having more than one magistrate into districts, no time is specified in which this shall be done. Looking then at Section 482.040, paragraph 2, we see that the first districts were to be created on or before April 1, 1946. 1946 being an election year for magistrates as provided by Section 482.010, which is as follows:

"1. Magistrates, as provided for in this chapter, shall be elected at the general election to be held in 1946, and every four years thereafter, and shall hold their offices for four years, or until their successors are elected or appointed, commissioned and qualified."

Therefore, it is the opinion of this office that the division of the county into districts was intended only for the purpose of elections. Since the next election for magistrates will be 1954, the new district created will have no effect until then.

CONCLUSION

Therefore it is the opinion of this office that the City of St. Louis is entitled to an additional magistrate based on the 1950 census and that the board of election commissioners is vested with sole authority to establish such new district without regard to public hearing to determine the necessity although such new districting will not be effective until the next election.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General

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