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STATE OF KANSAS

*Office of the Attorney General*

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER  
Attorney General

June 6, 1974

Opinion No. 74- 175

Mr. Charles Menghini  
Pittsburg City Attorney  
316 National Bank Building  
Pittsburg, Kansas 66762

Dear Mr. Menghini:

You advise that qualifications of the judge of the City Court of Pittsburg are prescribed by K.S.A. 20-1425 in pertinent part as follows:

"The judge and marshal of said city court, at the time of their appointment or election, shall be persons of approved integrity, possessing the ability to fill such offices and shall be qualified voters of said city and shall reside therein during their term of office . . . ."

You advise that since the office of justice of the peace has been abolished, "the City Court is the only Court of limited jurisdiction which handles all misdemeanors occurring outside the City of Pittsburg, as well as preliminary hearings on felony cases in Crawford County."

As city attorney, you inquire whether, inasmuch as the City Court has county-wide jurisdiction, the lawyer who is appointed or elected as City Court Judge must be a qualified elector of the City of Pittsburg.

The question on its face implicitly invokes the "one man, one vote" principle enunciated in Baker v. Carr, 369 U.S. 82 S.Ct. 691, 7 L.Ed.2d 663, and subsequent cases. However, it is now settled that this rule does not apply to the judiciary. Holshouser v. Scott, 335 F.Supp. 928 (M.D.N.C. 1971) aff'd. See also Buchanan v. Rhodes, 249 F.Supp. 860 (N.D. Ohio 1960), appeal dismissed, 385 U.S. 3, 87 S.Ct. 33, 17 L.Ed.2d 3, and New York State Association of Trial Lawyers v. Rockefeller, 267 F.Supp. 148 (S.D.N.Y.

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1967). It is not necessary, of course, that judges be selected by an electoral process rather than an appointive one. Once the state has chosen an elective process, it is not necessary that each vote be accorded the same weight as required of votes for members of the legislature and executive branch under the Equal Protection Clause. The inquiry pertinent here, however, does not stop at that point. In Holshouser, supra, the court stated thus:

"We hold that the one man, one vote rule does not apply to the state judiciary, and therefore a mere showing of a disparity among the voters or in the population figures of the district would not be sufficient to strike down this election procedure and these statutes. A showing of an arbitrary and capricious or invidious action or distinction between citizens and voters would be required. In other words, this court must find that the State has not only distinguished between citizens and voters, but that such distinctions are arbitrary and capricious or invidious." 335 F.Supp. at 932-933.

The objection is not that the weight of the votes of one class or group of citizens has been diluted as against the votes of another class or group. Rather, the objection is that one class of voters who are subject to the jurisdiction of the court are not all permitted to vote for the judge and marshal of the court, while the franchise is restricted to only those qualified electors residing within the city, but a part of the territorial jurisdiction of the court.

The name of the court is misleading, and invites confusion with a city police court, now properly designated a municipal court. As we understand, there is no County Court of Crawford County. There being a city court of countywide jurisdiction on July 1, 1969, no county court was established by operation of law under K.S.A. 20-802a.

The question thus presented is whether the State may provide for the creation of a court having county-wide jurisdiction, and may constitutionally restrict candidates for its judgeship, as well as the class of qualified electors therefor, to attorneys and electors, respectively, who are residents of a single corporate municipality within the county. The fact that the salaries of the judge and marshal are fixed and paid by the governing body of the city is constitutionally insignificant to the Equal Protection question posed.

We can conceive no reasonable ground for distinguishing between two groups of citizens in the matter of the franchise, both of

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whom reside within the county constituting the territorial jurisdiction of the court, simply on the basis that one group resides in the city, and the other group, outside the city. The City Court of Pittsburg exercises its jurisdiction as provided by law equally in the county and in the city, and the qualified electors of the county residing outside the corporate boundaries are entitled to exercise the franchise equally with those of the city in the election of the judge and marshal of a court exercising jurisdiction equally over both.

Similarly, there exists no reasonable basis upon which to distinguish between persons living within the jurisdiction of the court who are otherwise qualified to serve as judge or marshal thereof, solely on the basis of residence within or without the city. As stated above, all qualified electors are equally within the jurisdiction of the court, and residence or nonresidence in the city affords no better ground for distinguishing between persons otherwise qualified for those offices than it does for distinguishing between persons entitled to vote for candidates for those positions.

Accordingly, we conclude that any person who is at the time of his appointment or election to be judge or marshal of the City Court of Pittsburg, established pursuant to K.S.A. 20-1424 et seq. who is of approved integrity, who possesses the ability to fill such offices, and who is a qualified voter of Crawford County is qualified to serve in either of those positions, providing, of course, that the judge is at the time of his appointment or election a lawyer regularly admitted to practice law in the Supreme Court of the State of Kansas. In addition, we conclude that any person who is a qualified elector of Crawford County is constitutionally entitled to vote for candidates for either of these offices.

Yours very truly,



VERN MILLER  
Attorney General

VM:JRM:jsm