

Judges Shelve MacHauer Case

Decision on Pension Bid Is Delayed

The other three judges of New Orleans traffic court Monday night postponed any decision on Judge David MacHauer's request that they certify him as eligible for a disability pension. Certification would mean \$12,000 per year for life from the city for the judge.

Judge MacHauer was defeated by Thomas L. Giraud on Aug. 15 in the Democratic primary in his bid for reelection for the open traffic court judgeship. He has served on the court for nine years.

In postponing any decision on Judge MacHauer's request, the three judges, Lambert J. Hassinger, Oliver S. Delery and Louis P. Trent, said they would await a second report on Judge MacHauer's current health from another physician.

THREE JUDGES

Judge MacHauer's physician, Dr. Robert R. Burch, told the three judges he had advised Judge MacHauer to retire in 1967 and again in 1968 because of a series of medical problems he felt would be seriously aggravated by continued work on the bench.

Dr. Burch said Judge Mac-

Hauer has continued to suffer increasingly more severe problems with diabetes, heart disease that involves angina pectoris (mainly acute chest pains) and a herniated disc.

The doctor said the judge's condition reached the critical stage three days before the end of his election campaign and he therefore ordered complete bed rest, fearing the judge was imminently near a heart attack and possible death.

Judge MacHauer sat on the

bench the Monday following his defeat but has not sat on the bench since then, a spokesman for the judge said Monday night.

Dr. Burch also said in a written report to the judges, "Judge MacHauer's general health is poor and has been progressive. It is my medical opinion that he is no longer capable of carrying on the duties of a judge without this being seriously detrimental to his health."

Sitting in on the session with

the judges were representatives of the Metropolitan New Orleans Safety Council, the New Orleans Bar Association, the League of Women Voters, the Traffic Court Advisory Committee and the archdiocese of New Orleans.

STICKY PROBLEM

They were asked to sit in and offer advice by the three judges after Judge MacHauer presented them with the sticky problem a week ago in informal discussions. He has not submitted a formal request for the disability pension.

The judges are concerned about public reaction to Judge MacHauer's request, particular-

ly since it did not come until after he was defeated for the judgeship.

In arguing for Judge MacHauer, his attorney, George W. Reese, said the judge had admittedly exercised bad judgment in running for re-election this year but added that men frequently ignore their doctors' advice.

"By seeking the democratic nomination has he forfeited his right to be certified (for the pension?" asked Reese. The answer, he said, is "unquestionably no."

Reese further argued that the issue is not the timing of his

request but whether the judge is now no longer capable of performing his duties following the rigors of his campaign.

Beyond the question of deciding whether Judge MacHauer is indeed no longer capable of sitting on the bench and is therefore entitled to a lifetime pension of \$12,000 per year from the city, the judges face another problem.

LAW IS VAGUE

Louisiana law is vague on whether they have the authority to certify Judge MacHauer. The constitution does not specifically state that they do have the authority to certify.

If they do not, the authority

rests with the State Supreme Court which requires statements from two doctors as to the applicant's current health.

Consequently, when the three traffic court judges do receive the second doctor's report on Judge McMauer's health, they will have at least three major alternatives.

a. Vote to certify or not to certify and wait to see if a taxpayer or Judge Machauer challenges that decision before the State Supreme Court.

Such a procedure would force the Supreme Court to decide who does have authority in the case only if a suit were brought.

2. Recommend to the Supreme Court that it certify or not certify the judge but make no formal decision as an authoritative body.

In this case, if the Supreme Court decides it has the authority, the high court would have the additional recommendation of Judge Machauer's fellow judges to complement the doctors' reports.

If the Supreme Court decides authority rests with the traffic court, the result would be a foregone conclusion.

3. Take no position at all until the Supreme Court determines who has authority.