July 11, 1995

OPINION NO. 95-015

The Honorable James A. Philomena
Mahoning County Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503-1726

Dear Prosecutor Philomena:

You have requested an opinion regarding the phrase "engaged in the practice of law in this state," as it is used in R.C. 1901.06. Specifically, you ask whether an attorney must be actively engaged in the practice of law in Ohio for six years prior to his or her appointment to, or the commencement of, a term on the municipal court. After reviewing the statute and relevant materials, I answer the question in the affirmative for the following reasons.

R.C. 1901.06 provides in pertinent part:

> A municipal judge shall have been admitted to the practice of law in this state and shall have been, for a total of at least six years preceding his appointment or the commencement of his term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both.

I begin with the general proposition of statutory construction that words should be accorded their plain meaning unless a contrary specialized definition has attached through intent or interpretation. R.C. 1.42 codifies this standard and provides that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." Regardless of which standard contained in R.C. 1.42 is applied to the question you raise, the term "in this state" must be read to mean the State of Ohio.

R.C. 1.59 provides in part:

> As used in any statute, unless another definition is provided in such statute or a related statute:

....

> (G) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America. "This state" or "the state" means the State of Ohio.

The term "this state" has not been separately defined within R.C. Chapter 1901, or by any other provision of the Revised Code which is applicable to municipal court judges. Therefore, the general definition contained in R.C. 1.59(G) controls. As such, the term "in this state" has acquired "a technical or particular meaning...by legislative definition" and must be construed accordingly.[1] The construction mandated by the General Assembly is that "in this state" means the State of Ohio specifically.

It has been suggested that "in this state" should be construed together with "actively engaged in the practice of law" as imposing a single requirement. To a degree the phrase "actively engaged in the practice of law," as used in R.C. 1901.06, has acquired a judicially defined meaning. The Supreme Court first addressed this statute in *State, ex rel. Flynn v. Board of Electors of Cuyahoga County*, 164 Ohio St. 193, 129 N.E.2d 623 (1955). In *Flynn*, the court upheld the constitutionality of R.C. 1901.06 insofar as it sets an experience requirement, but read the statute narrowly, holding that a full-time municipal court referee was not actively engaged in the practice of law.

Some twenty-seven years later, the court overruled in part its holding in *Flynn* and adopted a more liberal standard, reasoning that the purpose of R.C. 1901.06 was to assure qualified municipal court judges. *State, ex rel. Schenck v. Shattuck* , 1 Ohio St. 3d 272, 439 N.E.2d 891 (1982); *see also State, ex rel. Altiere v. Trumbull County Board of Elections*, 65 Ohio St. 3d 164, 166, 602 N.E.2d 613, 615 (1992) ("under *Schenck*,...a liberal rule ought to apply to this requirement"). In *Schenck* the court stated: "_[w]ords limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified._" *Schenck, supra* at 274, 439 N.E.2d at 892 quoting *Gazan v. Heery* , 183 Ga. 30, 42, 187 S.E. 371, 378 (1936).

While the phrase "actively engaged in the practice of law" has acquired a liberal judicial definition the corresponding modifying phrase "in this state" has no judicial history. However, the phrase has been defined by the General Assembly to mean the State of Ohio. R.C. 1.59. In R.C. 1901.06 the General Assembly has established the minimum qualifications for serving as a municipal court judge. Judicial qualifications are not addressed by the constitution and therefore, are

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[1] Conversely, even if the phrase is construed according to its plain meaning the same result is reached. Words that are plain and unambiguous should be read and not construed. *State, ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E 823 (1927). While "state" or "states" may simply imply a political unit the use of "this" preceding "state" implies that Ohio, to the exclusion of all others, is intended.

proper subjects of legislative regulation. *Flynn, supra; State, ex rel. Lippincott v. Metzger* , 137 Ohio St. 307, 29 N.E.2d 361 (1940). The phrase, "in this state," modifies the phrase "actively engaged in the practice of law" and thereby imposes a necessary further qualification. The six years of practice must occur in Ohio.

There would appear to be sound policy reasons for requiring a minimum period of practice within the State of Ohio in addition to mere admission. This policy was succinctly stated by the Supreme Court when it wrote:

> It is for this reason that the requirement by the _legislative branch_ of ourgovernment that all judges of the state shall be attorneys who have beenadmitted to the practice of law for a specified number of years can lead onlyto the conclusion that the general assembly demands that the judges of thestate shall not only have met the standards of character and knowledge of the law required by this court for *admittance* to the practice of law, but that theyshall also have maintained, for a specified number of years, *and must continueto maintain* the high ethical standard of conduct required by the court. *Mahoning County Bar Association v. Franco*, 168 Ohio St. 17, 23, 151 N.E.2d 17 (1958) (emphasis in original).

If the statute is read as not requiring a minimum number of years engaged in the practice of law in Ohio, there would be nothing to stop potential candidates from forum shopping. An interested person who is licensed in several states need only establish residence in the state that offers the most attractive possibility of appointment or election. Furthermore, the laws of the several states are not uniform and experience gained in one state may not readily transfer to another.

As stated in *Schenck*, one seeking the office of municipal judge must in fact possess the minimum legal experience necessary to execute the duties of the office. The standard for judging this requirement is expressed in the phrase "actively engaged in the practice of law." In addition, *Schenck* required that a candidate for the office of municipal judge must also be qualified in law. Requiring admission in the State of Ohio for six years is a legal requirement that is not subject to differing interpretations. Determining what constitutes active engagement must necessarily be a fluid analysis that lends itself to a liberal interpretation in the interest of public policy. However, the statute specifically states that six years of practice must be in this state. This term has acquired a definite meaning by legislative action and must be construed accordingly.

**Conclusion**

Pursuant to R.C. 1901.06 an attorney must be actively engaged in the practice of law in Ohio for six years prior to his or her appointment to, or the commencement of, a term on the municipal court.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 95-015

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