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COUNTY COURTS — CONSTABLES, ATTENDANCE OF —
§ 509.05 RC — COMMENCEMENT OF ACTIONS — SERVICE OF
SUMMONS—§ 509.11 RC AMENDED BY IMPLICATION, H. B.
NOS. 914, 937, 102nd GA—RETURN OF ORIGINAL WRITS,
EXECUTIONS.

SYLLABUS:

1. Section 1913.18, Revised Code, requires the attendance of a constable during the progress of a trial in the county court and the constable of any township in the county court district is authorized so to attend regardless of where such court sits within the county court district; but normally, as provided in Section 509.05, Revised Code, the constable in attendance will be the constable of the township in which the county court sits.

2. Section 1911.01, Revised Code, provides that an action in a county court may be commenced by a writ of summons and requires (1) that such writ be delivered to the constable and (2) that that officer shall serve it. Such constable, as provided in Section 509.05, Revised Code, is authorized to make such service anywhere in the county.

3. Section 509.11, Revised Code, is amended by necessary implication by the enactment of House Bills Nos. 914 and 937, 102nd General Assembly, so as to require the constable to return the originals of writs of commitments, executions and other process to the county court judge by whom such writs were issued.

Columbus, Ohio, December 18, 1957

Hon. Matthias Heck, Prosecuting Attorney
Montgomery County, Dayton, Ohio

Dear Sir:

I have before me your request in which you ask the following questions:

"1. Must the sheriff attend the county court where the court sits in a municipality, inasmuch as Section 1913.18 provides that the constable shall attend court but has no jurisdiction outside of the township where elected or appointed?

"2. Where the area of jurisdiction of a county court judge consists of a city, a village, and one township, must or can the sheriff serve the writ of summons under Section 1911.01 when the writ is to be served in the city or village?

"3. Can a mayor's court transfer pending civil cases to the county court?

"4. Since Section 509.11, Revised Code, was not amended to conform with Chapter 1907, Revised Code, and includes reference to a commitment signed by the justice of the peace whose office was abolished by H. B. 914 and 937, is a commitment required of the constable when taking a person to the county jail and if not can the sheriff refuse to accept the prisoner?

Your first question suggests the possibility that you are entertaining the notion that territory embraced within the limits of a municipality is by the act of incorporation, automatically excluded from the territory of the township. This is not the case for although a change in the township boundaries can be effected by the action of the municipal council and the board of county commissioners, the political entity of a civil township is almost indestructible. In this connection your attention is invited to the syllabus in Opinion No. 4642, Opinions of the Attorney General for 1954, page 648, which reads:

"1. The extension of the limits of a municipality by the annexation of territory in adjacent township does not per se affect the limits or political existence of such township. The municipal authority may however initiate proceedings under the provision of Section 503.07, Revised Code, to adjust the township limits to make them identical in whole or in part with a municipal limit

so as to accomplish the abolition of certain township offices under the provision of Section 703.22, Revised Code.”

“4. Where the limits of a municipality extend into the territory of a township the political existence of a township is not affected and the electors of the municipality residing within the overlapping portion of the township may vote for a township trustee, township clerk, justices of the peace, and constables to be elected in such township.”

Accordingly, if the township in which the municipality in question is located is included within the area of jurisdiction of the county court concerned it will be seen that the problem you suggest will not be encountered.

Section 1913.18, Revised Code, reads in part as follows:

“The constable shall attend the county court at and during the progress of the trial.”

I think it is clear that the constable must attend the county court wherever it sits. Section 1907.011, Revised Code, describes the territorial jurisdiction of the county court as “consisting of all territory within the county not subject to the territorial jurisdiction of any municipal court.” Although it is not required by law that a county court judge must sit within his area of jurisdiction to hold court, it is to be assumed that no county court judge will sit outside the territorial jurisdiction of the court, so that no constable will attend a county court outside his jurisdiction even in those cases where a particular county court judge holds court outside his own area of jurisdiction. See Opinion No. 1018, Opinions of the Attorney General for 1957, p. 448.

Section 509.05, Revised Code, reads in part as follows:

“In addition to the county sheriff, constables shall be ministerial officers of the county court in all cases in their respective townships, and in criminal cases, they shall be such officers within the county. * * *”

*The authority of a constable in serving any process, either civil or criminal, and in doing his duties generally shall extend throughout the county * * *.”* (Emphasis added.)

The county court district may, and in nearly all cases will, embrace the territory of a township or townships in which one or more cities or villages are situated so long as such territory is not included in the territorial jurisdiction of a municipal court. Normally, the constable in attendance at the county court will be a constable of the township in which the county court is at that time sitting. This is true because constables are designated, in Section 509.05, *supra*, as ministerial officers of the court in "all cases in their respective townships." There is no reason, however, why a constable may not attend the county court regardless of the place within the district the court sits. In the instance of a criminal case, Section 509.05, Revised Code, contains a double declaration of the constable's authority to perform his duties anywhere in the county. In the instance of a civil case the constable may attend the county court sitting anywhere in the county by virtue of that portion of Section 509.05, Revised Code, which reads:

"The authority of a constable in serving any process, either civil or criminal, and in doing his duties generally shall extend throughout the county * * *."

Because Section 1913.18, Revised Code, makes it a duty of the constable to attend the county court I conclude that the sheriff is not required to attend the county court merely because it sits in a municipality.

Coming now to your second query, it appears that you also raise this question by reason of a misapprehension as to the effect on township boundaries where a municipality is incorporated or where territory is annexed to it. See Opinion No. 4642, Opinions of the Attorney General for 1954, page 648, *supra*.

We may note, however, that Section 1911.01, Revised Code, provides in part:

"An action before the judge of a county court is commenced by a writ of summons, or by the appearance and agreement of the parties without summons. *If such writ is issued, the action is commenced upon delivery of such writ to the constable, who shall serve it.*" (Emphasis added.)

When this Section is read together with Section 509.05, Revised Code, it is apparent that a constable may, in any case, serve a summons anywhere within his respective township, whether it be in a municipality or elsewhere in the township. However, the ministerial officers of the county

court are the sheriff and all of the various constables of the townships within the territorial jurisdiction of the county court. Couple this with the language of Section 509.05, which reads:

“The authority of a constable in serving any process, *either civil or criminal*, * * * shall extend throughout the county * * *.”
(Emphasis added.)

The provision earlier set out in Section 509.05, Revised Code, to the effect that constables are the ministerial officers in all cases within their respective township is not a restriction of this grant of authority which appears later in Section 509.05, Revised Code. At most, it is indicative of an intent that the constable within the township where the process is to be served will normally accomplish such service. However, a summons may be directed to the constable of *any* township within the territorial jurisdiction of the county court and such constable may serve the summons *anywhere within the county*, whether it be within a municipality or elsewhere. It follows, therefore, that there is no necessity for the sheriff to serve such writs within the city or the village. As to his authority to make such service, see my Opinion No. 1427, Opinions of the Attorney General 1957, p. 741.

As to your third query, I find no authority for the exercise of jurisdiction in civil cases by a mayor's court, and, of course, no statutory provision for the transfer of civil cases from the mayor's court to the county court. It is said in 29 Ohio Jurisprudence, page 96:

“Since the jurisdiction of a mayor is purely statutory, and there is no express statute conferring civil jurisdiction upon such officer, it seems clear that he has no civil jurisdiction whatsoever.”

It is clear that there will be no occasion to consider the transfer which you suggest.

Coming now to your fourth question, it will be observed that Section 509.11, Revised Code, reads as follows:

“When it becomes the duty of the constable to take a person to the county jail, such constable shall deliver to the sheriff or jailer a certified copy of the execution, commitment, or other process, whereby he holds such person in custody, *and shall return the original to the justice of the peace who issued it*. Such copy is sufficient authority to the sheriff or jailer to keep the prisoner in jail until discharged.” (Emphasis added.)

It is true that this section was neither expressly amended nor repealed in the enactment of the House Bills Nos. 914 and 937, *supra*. We may note, however, that this section insofar as it relates to justices of the peace, prescribed only what the constable was to do with the *original* of such commitment papers. The other provision in this section, still fully effective, requires the constable to deliver a certified copy of the commitment to the sheriff or jailer when the constable takes a person to the county jail. The various statutes giving the judge of the county court power to commit persons in criminal cases and contempt cases prescribe the manner or procedure for so doing. We may assume, therefore, that Section 509.11, Revised Code, is amended by necessary implication so as to require the constable to return the original of such execution, commitment, or process to the judge of the county court who issued it.

Accordingly, it is my opinion and you are advised that:

1. Section 1913.18, Revised Code, requires the attendance of a constable during the progress of a trial in the county court and the constable of any township in the county court district is authorized so to attend regardless of where such court sits within the county court district; but normally, as provided in Section 509.05, Revised Code, the constable in attendance will be the constable of the township in which the court sits.

2. Section 1911.01, Revised Code, provides that an action in a county court may be commenced by a writ of summons and requires (1) that such writ be delivered to the constable and (2) that that officer shall serve it. Such constable, as provided in Section 509.05, Revised Code, is authorized to make such service anywhere in the county.

3. Section 509.11, Revised Code, is amended by necessary implication by the enactment of House Bills Nos. 914 and 937, 102nd General Assembly, so as to require the constable to return the originals of writs of commitments, executions and other process to the county court judge by whom such writs were issued.

Respectfully,
WILLIAM SANBE
Attorney General