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SECTION 1907.081 REVISED CODE, PERTAINING TO JUDGES PRACTICING LAW CONSTITUTES TO SECTION 4705.01, REVISED CODE, A GENERAL STATUTE BARRING JUDGES FROM PRACTICING LAW—JUDGE OF A COUNTY ALLOWED TO PRACTICE LAW AS LONG AS IT DOES NOT CONCERN MATTERS PENDING IN HIS COURT—§§4705.01, R.C., 1907.081, R.C.

SYLLABUS:

1. The provisions of Section 1907.081, Revised Code, a special statute pertaining to the practice of law by judges of county courts, constitute an exception to the provisions of Section 4705.01, Revised Code, a general statute barring judges of courts of record from practicing law during their terms of office, even though, under Section 1907.012, Revised Code, county courts will become courts of record for all purposes as of January 1, 1963.

2. Under Section 1907.081, Revised Code, a judge of a county court, who is an attorney, is authorized to practice law so long as such practice is not related to matters pending or originating in the county court during his term of office; and such authority will not be affected by the fact that county courts become courts of record on January 1, 1963.

Columbus, Ohio, September 19, 1962

Hon. Ralph A. Hill, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

Your request for my opinion asks whether as of January 1, 1963, judges of county courts will be prohibited from practicing law in other

courts. You refer to Sections 4705.01, 1907.012 and 1907.081, Revised Code, as being pertinent in this question.

Section 4705.01, Revised Code, reads, in part, as follows:

* * * * *

“No judge of *any court of record* in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in section 1901.11 of the Revised Code.

* * * * *

(Emphasis added)

The above provision of law was made effective as to all courts of record in 1913. (103 Ohio Laws, 468, 469.)

As to the practice of law by county court judges, Section 1907.081, Revised Code, reads in pertinent part:

* * * * *

“A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office.”

The above provision was enacted effective January 1, 1958. (127 Ohio Laws, 978, 982.)

At the present time, county courts are not considered courts of record, thus Section 4705.01, *supra*, could not now be considered applicable in any way. Section 1907.012, Revised Code, provides, however, as follows:

* * * * *

“Effective January 1, 1963, county courts shall be considered courts of record for all purposes of law.”

The above provision was inserted in Section 1907.012 as of November 6, 1959. (128 Ohio Laws, 823, 827.)

I note that part-time municipal court judges are specifically exempted from the provision of Section 4705.01, Revised Code, above noted, even though municipal courts are courts of record. Section 1901.11, Revised Code, referred to in said Section 4705.01, reads, in part:

“Judges designated as part-time judges by section 1901.08 of the Revised Code shall receive as compensation not less than three thousand dollars per annum, as the legislative authority prescribes, and such judges shall be disqualified from the practice of law only as to matters pending or originating in the courts in which they serve during their terms of office. * * *.”

“* * * * * * * * *”

Section 4705.01, *supra*, does not specifically exempt county court judges from its provisions, as it does with part-time municipal court judges. I believe, however, that the specific provisions of Section 1907.081, *supra*, allowing a judge of a county court to practice law in matters not pending or originating in his county court during his term of office should be read as an exception to the general provisions of Section 4705.01, *supra*. The rule of law in this regard is stated by Stewart, J. in the case of *Fisher Bros. Co. v. Bowers*, 166 Ohio St., 191 at 196, as follows:

“We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter. *State, ex rel. Steller et al., Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414, 126 N.E., 413; *State, ex rel. Elliott Co., v. Connor, Supt.*, 123 Ohio St., 310, 175 N.E., 200; *Acme Engineering Co. v. Jones, Admr.*, 150 Ohio St., 423, 83 N.E. (2d), 202; *Johnson v. United Enterprises, Inc., ante.* 149.”

“* * * * * * * * *”

I might further note that the provisions of Section 1907.081, *supra*, enacted in 1958, constitute a later expression of the legislature than do the provisions of Section 4705.01, *supra*, here applicable, those provisions being originally enacted in 1913. But even if the provisions of said Section 4705.01 had been enacted later, I would still consider the provisions of the special statute, Section 1907.081, *supra*, to take precedence. As to this, it is stated in 50 Ohio Jurisprudence 2d, pages 88, 89, Section 106:

“The rules, enunciated in the previous section relating to the control of special statutory provisions over general ones are particularly applicable where the special provision is a later enactment, but they apply, in some cases, even where the general provision is the later act, or where the general provision was amended after the enactment of the special provision, or where both provisions are a part of the same statute. It has even been said that the applicability of the rule is not dependent in any way on the time of the enactment of such statutes.”

In view of the above, the fact that county courts will become courts of record on January 1, 1963 does not make Section 4705.01, *supra*, applicable to judges of those courts.

In conclusion, it is my opinion and you are advised:

1. The provisions of Section 1907.081, Revised Code, a special statute pertaining to the practice of law by judges of county courts, constitute an exception to the provisions of Section 4705.01, Revised Code, a general statute barring judges of courts of record from practicing law during their terms of office, even though, under Section 1907.012, Revised Code, county courts will become courts of record for all purposes as of January 1, 1963.

2. Under Section 1907.081, Revised Code, a judge of a county court, who is an attorney, is authorized to practice law so long as such practice is not related to matters pending or originating in the county court during his term of office; and such authority will not be affected by the fact that county courts become courts of record on January 1, 1963.

Respectfully,
MARK McELROY
Attorney General