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COUNTY COURT—ABOLISHED WHEN TERRITORY OF MUNICIPAL COURT OR COURTS EXPANDED TO INCLUDE AREA OF COUNTY COURT—§§1901.02, 1901.04, 1907.011, R.C.

SYLLABUS:

1. Pursuant to Sections 1901.04 and 1907.011, Revised Code, when the territory of a municipal court or courts, is expanded under Section 1901.02, Revised Code, to include all of the area of an existing county court, the existing county court is abolished.
2. When the territory of a municipal court or courts is expanded under Section 1901.02, Revised Code, so as to abolish an existing county court, the term of the incumbent county court judge, and his right to salary, are terminated.

Columbus, Ohio, March 3, 1960

Hon. Warren F. Sheets, Prosecuting Attorney
Gallia County, Gallipolis, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Sid Vance, County Judge of Gallia County, Ohio, has requested I secure your opinion concerning the following matter.

“Sid Vance is the duly elected, qualified and acting County Judge in and for Gallia County, Ohio, having been elected to said office for a term of four (4) years, beginning 1 January, 1959.

“At the time of his election there was in existence the Municipal Court in and for the City of Gallipolis, its territorial jurisdiction being confined to the Corporation limits of the City of Gallipolis.

“The last session of the General Assembly amended Section 1901.02 of the Revised Code, effective 7/21/59, which pertinent portion of said section reads as follows:

“‘After January 1, 1960, the Gallipolis Municipal Court has jurisdiction within Gallia County.’

“Your opinion is therefore requested, more particularly to the following questions.

“(1) Does the County Court in and for Gallia County, Ohio, cease to exist, and the Judge relieved from all his obligations, as of 1 January, 1960?

“(2) Does the Court continue in existence, and have concurrent jurisdiction to those matters which it had jurisdiction, prior to 1 January, 1960, with the Municipal Court in and for Gallia County, Ohio?

“(3) Is the salary now being paid to the County Judge, Mr. Vance, affected in any way, after 1 January, 1960?

“I direct your attention to Section 1901.04, effective 11/6/59, paragraph two, which reads as follows:

“‘Upon the institution of a Municipal Court, the jurisdiction of county courts and police justices in all civil and criminal causes terminates in any township or municipal corporation which is entirely within the territory.’

“Time being of the essence, I would appreciate your opinion, if possible, by 1 January, 1960. If the formal opinion is not completed by this date, your informal opinion by telephone or letter will be welcomed.”

Regarding the existence of a county court, Section 1907.011, Revised Code, reads as follows:

“There is thereby created in each county of the state, in which the territorial jurisdiction of a municipal court or municipal courts is not co-extensive with the boundaries of the county, a court to be known as the county court with jurisdiction *throughout a county court district consisting of all territory within the county not subject to the territorial jurisdiction of any municipal court.* (Emphasis added)

On the same subject, Section 1901.04, Revised Code, reads in part:

“* * * * * * * * *

“Upon the institution of a municipal court, the jurisdiction of county courts and police justices in all civil and criminal causes terminates in any township or municipal corporation which is entirely within the territory.

“* * * * * * * * *”

Thus, it is clearly provided that a county court district includes only such area as is not within the territory of a municipal court, and the jurisdiction of a county court terminates in any area in which a municipal court is instituted. It follows, therefore, that where the territory of a municipal court is expanded so as to include all of the territory of an existing county court, the county court is abolished.

Regarding the abolishing of a county court, it should be noted that county courts are not constitutional offices but were created by the legislature. Such offices, therefore, may be abolished by the legislature. (See *State, ex rel. Flinn v. Wright*, 7 Ohio St., 333.)

That an office is abolished when the duties and authority of the incumbent are removed, is well settled. (See 32 Ohio Jurisprudence, Section 217 at page 1074.)

Prior to January 1, 1960, under Sections 1901.01 and 1902.02, Revised Code, the Gallipolis municipal court had jurisdiction only within the municipal corporation of Gallipolis. Section 1901.02, *supra*, was amended by Amended Senate Bill No. 350 of the 103rd General Assembly, effective July 21, 1959, to provide in part:

“* * *

“After January 1, 1960, the Gallipolis municipal court has jurisdiction within Gallia county.

“* * *”

Thus, as of January 1, 1960, the territory of the Gallipolis municipal court includes all of Gallia county, and, under Sections 1901.04 and 1907.011, *supra*, the existing county court is abolished as of that date.

In view of my answer to your first question, it is unnecessary to consider your second question.

Regarding the effect of the abolition of an office on the incumbent thereof it is stated in 32 Ohio Jurisprudence, Section 217, pages 1074 and 1075:

“The effect of the abolition of an office always is to *terminate the term of the incumbent*, since he cannot be an officer or incumbent of an office which has ceased to exist; in other words, *he cannot be a de facto officer of an office no longer in existence. He can recover no salary thereafter*; and it is his duty to transfer to the proper authorities all property connected therewith.

“* * *”

(Emphasis added)

In the case of *City of Elyria v. Vandemark*, 100 Ohio St., 365, the court held in headnote one:

“When a public office is abolished by duly constituted authority, the incumbent thereof ceases to be an officer, for he cannot be a de facto officer of an office no longer in existence.”

Answering your third question, therefore, the abolishment of the county court of Gallia county, as of January 1, 1960, terminated the term of the incumbent and his right to salary, as of that date.

In conclusion, I am of the opinion and you are advised:

1. Pursuant to Sections 1901.04 and 1907.011, Revised Code, when the territory of a municipal court or courts, is expanded under Section 1901.02, Revised Code, to include all of the area of an existing county court, the existing county court is abolished.

2. When the territory of a municipal court or courts is expanded under Section 1901.02, Revised Code, so as to abolish an existing county court, the term of the incumbent county court judge, and his right to salary, are terminated.

Respectfully,

MARK McELROY

Attorney General