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JUSTICE OF PEACE—AMENDED SB 319, 101 GA—DOES NOT HAVE EFFECT OF ABOLISHING OFFICE—OFFICE CONTINUED AS TOWNSHIP OFFICE—SECTION 3929.17 RC—PREMIUMS ON BOND OF OFFICER MUST BE PAID BY TOWNSHIP WHERE HE IS ELECTED AND WHERE HE RESIDES.

SYLLABUS:

The provisions of Amended Senate Bill No. 319, 101st General Assembly, do not have the effect of abolishing the office of justice of the peace, such office being continued in existence as a township office within the meaning of Section 3929.17, Revised Code, under the provisions of which section the premium on the bond of the officer concerned must be paid by "the township in which he is elected and where he resides."

Columbus, Ohio, December 29, 1955

Hon. William H. Irwin, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir:

I have for consideration your request for my opinion in which the following question is presented:

"Shall the bond premium for the newly elected Justices of the Peace be paid by the Board of Township Trustees of the various townships in which they were elected?"

In Section 3929.17, Revised Code, it is provided that:

"The premium of any licensed surety company on the bond of any public officer, deputy, or employee shall be allowed and paid by the state, county, township, municipal corporation, or other subdivision, or board of education, of which such person giving the bond is such officer, deputy, or employee."

The question thus raised is whether justices of the peace are township officers within the meaning of this section.

This office has historically been regarded as a township office by reason of the provision in Section 1907.01, Revised Code, Section 1711-1,

General Code, establishing the office "in each township." In Opinion No. 208, Opinions of the Attorney General for 1933, p. 299 (300) we find these statements:

"This section contains the words 'office of justice of the peace.' In the case of *In re Hesse*, 93 O. S. 230, the court said at page 231:

"*The office of justice of the peace* on January 1, 1913, ceased to be a constitutional office. Acting under the authority conferred upon it by Section 1, Article IV of the Constitution, as amended in 1912, the general assembly, by an act filed in the office of the secretary of State April 30, 1913 (103 O. L., 214), established *the office of justice of the peace in each of the several townships* in the different counties of the state, excepting townships in which a court other than a mayor's court then existed or might thereafter be created having jurisdiction of all cases of which justices of the peace had or might have jurisdiction. The jurisdiction, powers and duties of *the office* under that act are the same as were provided by the laws in force on September 3, 1912 * * *." (Italics the writer's.)

"This language clearly shows that the court considered a justice of the peace to hold a township office. Likewise, in *State ex rel vs. Redding*, 87 O. S. 388, both the syllabus and the opinion contain references to 'the office of justice of the peace'; and in *State ex rel. vs. Morse*, 94 O. S. 435, justices are termed 'officers.' Similar language appears in an opinion of this office reported in Opinions of the Attorney General, 1925, page 755. Thus it is clear that a justice of the peace is a township officer."

It remains, therefore, to consider the possible effect on the status of these officers by reason of the enactment of Amended Senate Bill No. 319, 101st General Assembly, the pertinent portions of which are effective on January 1, 1956. In considering the import of this enactment in my Opinion No. 5805, dated September 29, 1955, one of the conclusions reached was as follows:

"Amended Senate Bill No. 319, 101st General Assembly, does not abolish any existing office of justice of the peace, and elections for such office in the current calendar year will be conducted as provided in pertinent existing statutes. Such election procedure, after January 1, 1956, the effective date of such act, will be changed only to the extent provided in Sections 1907.02 and 1907.03, Revised Code, as therein amended."

In the discussion of this point, I said in the course of the opinion:

“Here it is proper to observe that this enactment cannot be regarded as effecting the abolition of the existing office of justice of the peace and the creation of a new office, for there is not only no express provision to that effect but there is, in Section 1907.03, Revised Code, an express provision against depriving any justice of the peace his commission during the term for which he is elected. In the absence of any indication to the contrary, I am impelled to the conclusion that this inhibition operates in favor of justices presently holding office for a term extending to December 31, 1957. Moreover, since it is beyond the authority of the legislature, under Article II, Section 27, Ohio Constitution, to exercise any power of appointment, the ‘continuation in office’ provision thus made could be valid only in the event that there will be no abolition of the existing office and the creation of a new one.

“I am impelled to the conclusion, therefore, that the existing office of justice of the peace will not be abolished as of January 1, 1956, but only that certain changes in the emoluments thereof, in the method of filling vacancies therein, in the fixing of the dates of certain elections therefor, and in the territorial jurisdiction thereof in civil cases, as pointed out in my opinion No. 5791, dated September 27, 1955, will be effected by the enactment here in question.”

In my Opinion No. 5791 thus referred to I concluded, on the matter of territorial jurisdiction, that:

“On and after January 1, 1956, the effective date of the amendment of Section 1909.01, Revised Code, as effected by the enactment of Amended Senate Bill No. 319, 101st General Assembly, the territorial jurisdiction of justices of the peace in *civil* cases will be expanded to include the justice court district in which the justices concerned ‘were elected and in which they reside’; but no comparable change in the territorial jurisdiction of justices in criminal cases is effected by such enactment, and the provisions of Section 2931.02, Revised Code, limiting such territorial jurisdiction, with certain enumerated exceptions to ‘the township in which he is elected and where he resides,’ remain undisturbed by this enactment.”

In view of these conclusions, and especially because the legislature has evinced the intent not to abolish an existing office, I am impelled to the conclusion that the office of justice of the peace, on and after January 1, 1956, is still essentially a township office despite the several changes wrought by the enactment of Amended Senate Bill No. 319, *supra*.

Accordingly, in specific answer to your inquiry, it is my opinion that the provisions of Amended Senate Bill No. 319, 101st General Assembly, do not have the effect of abolishing the office of justice of the peace, such office being continued in existence as a township office within the meaning of Section 3929.17, Revised Code, under the provisions of which section the premium on the bond of the officer concerned must be paid by "the township in which he is elected and where he resides."

Respectfully,

C. WILLIAM O'NEILL

Attorney General