

6415

1. JUSTICE OF PEACE—ELECTED OFFICIAL—NOT REQUIRED TO BE MEMBER OF PUBLIC EMPLOYEES RETIREMENT SYSTEM.
2. JUSTICE OF PEACE—WHO ELECTS TO BECOME MEMBER OF PUBLIC EMPLOYEES RETIREMENT SYSTEM—DEDUCTIONS OF SIX PER CENT MUST BE MADE BY COUNTY AUDITOR FROM HIS “EARNABLE SALARY”—REGULAR EMPLOYEE CONTRIBUTIONS TO RETIREMENT SYSTEM—SECTION 145.20 RC.

SYLLABUS:

1. A justice of the peace, being an elected official, is not required to be a member of the public employees retirement system.

2. Where a justice of the peace elects to become a member of the public employees retirement system, pursuant to Section 145.20, Revised Code, deductions of six per cent from his "earnable salary" must be made by the county auditor as regular employee contributions to the retirement system.

Columbus, Ohio, March 29, 1956

Hon. John H. Barber, Prosecuting Attorney
Fulton County, Wauseon, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"I have been asked by the Fulton County Auditor to seek your formal opinion on the question of whether the Justice of the Peace salary fixed by the County Commissioners pursuant to section 1907.47 ORC comes under the Public Employees Retirement System. More particularly the question is whether pursuant to section 145.47 ORC the County Auditor is required to deduct six per cent of the Justice of the Peace salary for public employees retirement."

By the enactment of Amended Senate Bill No. 319, effective January 1, 1956, the 101st General Assembly made certain changes in the law relative to the office of justice of the peace.

Section 1907.01, Revised Code, created in each county a commission to be known as the "commission on justice courts" consisting of the presiding judge of the court of common pleas, the probate judge, and the president of the board of county commissioners. This commission is directed by law to establish one or more justice court districts, and each district shall consist of the territory of one or more whole townships.

Section 1907.02, Revised Code, provides that the commission on justice courts, once a new justice court district is created, shall determine the number of justices of the peace for such district, and the day of election of such justices.

Justices of the peace have been placed on a fixed *salary* basis by the

provisions of Section 1907.47, Revised Code, effective September 30, 1955. This section reads as follows:

“The justices of the peace shall receive a *fixed annual salary* and such salary shall be *determined by the board of county commissioners* of the county in which such office of the justice of the peace is situated, and may include a fixed annual allowance for supplies, forms, and equipment.” (Emphasis added.)

Hence, a justice of the peace is an *elective* public officer who is paid a salary determined by the county commissioners and paid from the county treasury.

Turning to the law which governs the public employees retirement system, it will be noted in Section 145.03, Revised Code, that membership in that system is compulsory and consists “of all public employees upon being appointed.” Section 145.01, Revised Code, the definition section, defines “public employee” as follows:

“‘Public employee’ means any person holding an office, *not elective*, under the state or any county, municipal corporation, park district, conservancy district, sanitary district, health district, township * * * or employed and paid in whole or in part by the state or any of the authorities named in this division * * *.” (Emphasis added.)

It is therefore clear that *elective* officials are not compelled to become members of the retirement system. Your attention is directed to Section 145.20, Revised Code, which reads in pertinent part as follows:

“*Any elective official* of the state of Ohio or of any political subdivision thereof having employees in the public employees retirement system *shall be considered as an employee of the state or such political subdivision, and may become a member of the system upon application* to the public employees retirement board, with all the rights, privileges and obligations of membership. * * *” (Emphasis added.)

An elective official, although exempt from compulsory membership in the retirement system, may, if he so chooses, establish membership in the system, pursuant to Section 145.20, Revised Code. If he elects to become a member, he is considered as an employee of the political subdivision which he serves as an elective official. Justices of the peace, now holding office, were elected by the electors of a township.

What I have just said seemingly indicates that a justice of the peace

who elects to become a member of the retirement system would be considered an employee of a township or a justice court district. However, Section 145.47, Revised Code, should be taken into consideration, and this section provides in material part as follows:

“Beginning September 1, 1951, *each public employee* who is a member of the public employees retirement system *shall contribute six per cent* of his earnable salary or compensation to the employees’ savings fund. The head of each department, institution, board, and commission, *and the fiscal officer of each local authority* subject to sections 145.01 to 145.57, inclusive, of the Revised Code, *shall deduct from the compensation of each member* on every payroll subsequent to September 1, 1951, or if the employee becomes a member subsequent to that date then on the date upon which such employee became a member, an amount equal to six per cent of such member’s earnable salary or compensation. * * *”
(Emphasis added.)

It is my opinion that for the limited purposes of the retirement law, a justice of the peace, who *elects* to become a member of the retirement system is an “employee” of the county in which his justice court is situated.

The syllabus of my opinion No. 5951, Opinions of the Attorney General for 1955, dated November 18, 1955, is as follows:

“1. The salary provided for justices of the peace in Section 1907.47, Revised Code should be paid from the county treasury as are other claims against the county.

“2. Claims for such salary may be allowed by the county commissioners as provided in Section 307.55, Revised Code, at such intervals as the commissioners in their discretion may determine.

“3. The salary of justices of the peace for which provision is made in Section 1907.47, Revised Code, may *include* an allowance for supplies, etc., and it is not necessary that the county commissioners, in fixing such salary, designate separately the amount thereof attributable to such allowance. From the aggregate amount of salary so fixed and paid to justices of the peace such officers are required to expend amounts sufficient to defray the cost of necessary supplies, forms, and equipment.”

In rendering this opinion, it should be emphasized that I am only passing upon the status of a justice of the peace under the *retirement* law. I am mindful of the fact that in Opinion No. 6122, Opinions of the Attorney General for 1955, dated December 29, 1955, I held 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, and that such office is continued in existence as a *township office* within the meaning of Section 3929.17, Revised Code. It will be observed that Section 3929.17, Revised Code, is the statute which requires the premium on the bond of a public officer to be 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.

In Opinion No. 6256, Opinions of the Attorney General for 1956, dated February 16, 1956, I held that under the provisions of Article XVIII, Section 1, Ohio Constitution, elections for the office of justice of the peace cannot be set, under the provisions of Section 1907.02, Revised Code, prior to the November election in 1957. In interpreting the applicable statutory provisions I concluded that the office of justice of the peace was "still essentially a township office," so that the election, as provided by the constitution in the case of such offices, must be held on the first Tuesday after the first Monday in November of the odd numbered years.

Considering the status of a justice of the peace under the *retirement* law, with particular reference to the mechanics therein provided for retirement deductions from salary, it would follow, as you have assumed in your request, that the county auditor is the person required to make the deductions.

Accordingly, it is my opinion that:

1. A justice of the peace, being an elected official, is not required to be a member of the public employees retirement system.
2. Where a justice of the peace elects to become a member of the public employees retirement system, pursuant to Section 145.20, Revised Code, deductions of six per cent from his "earnable salary" must be made by the county auditor as regular employee contributions to the retirement system.

Respectfully,

C. WILLIAM O'NEILL
Attorney General