

"Has a justice of the peace final jurisdiction to hear and determine all misdemeanor cases in which a fine *only* is the punishment, and in which the offender does not waive a trial by jury, and does not submit to be tried by the justice of the peace?"

This office has had occasion in a number of recent opinions to construe the several sections of the General Code which relate to the powers and jurisdiction of justices of the peace in misdemeanor cases. I refer to Opinion No. 392, dated April 27, 1927, addressed to the State Board of Pharmacy, Opinion No. 511, dated May 19, 1927, addressed to the Bureau of Inspection and Supervision of Public Offices, Opinion No. 577, dated June 6, 1927, addressed to the Prosecuting Attorney of Sandusky County, Opinion No. 1604, dated January 19, 1928, addressed to the Prosecuting Attorney of Mahoning County, Opinion No. 1625, dated January 26, 1928, addressed to the Prosecuting Attorney of Gallia County and Opinion No. 1665, dated February 3, 1928, addressed to the Prosecuting Attorney of Stark County.

In this connection your attention is directed to the case of *Tari vs. The State of Ohio*, 117 O. S. 481, reported in Vol. XXVI, The Ohio Law Bulletin and Reporter of February 6, 1928, at page 274, the syllabus of which reads:

"1. Interest of a judge in the decision of a cause pending before him disqualifies him from hearing and determining the cause.

2. Such disqualification is waived unless objection be made thereto at the earliest available opportunity, and if known to the complaining party at or before the trial and if no objection be made in the trial court, will be deemed to be waived.

3. Interest of the trial judge does not render the judgment void but merely voidable."

I am enclosing herewith copies of the opinions referred to. If, after reading these opinions, you have further questions in this regard, I will be glad to answer the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1781.

ELECTIONS—CANDIDATE FOR OFFICE OF COUNTY COMMISSIONER FOR BOTH A FULL TERM AND AN UNEXPIRED TERM—HOW BALLOTS ARE PREPARED BY BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS.

SYLLABUS:

In a county where there are candidates for the office of county commissioner for both a full term and an unexpired term, it will be necessary for the Board of Deputy State Supervisors of Elections of said county to cause to be properly printed immediately above the names of such candidates the words "Vote for not more than ———"

for the full term of four years" for those candidates who are seeking said term; also to cause to be placed immediately above the names of candidates for the unexpired term "Vote for not more than one for the unexpired term."

COLUMBUS, OHIO, February 28, 1928.

HON. FRANK WIEDMANN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"During the month of December, 1927, a member of our board of county commissioners passed away. He had been elected in 1926 for a term of four years. After his death a successor was appointed by the Recorder, Auditor, and Probate Judge, to serve until a successor would be elected. At the coming election in November, 1928, it will be necessary to elect two commissioners for four year terms and a commissioner to fill the unexpired term of the commissioner who died. Will it be necessary for the Board of Elections to prepare a declaration of candidacy that will provide for the announcement by the candidate as to whether he is running for the four year term or for the unexpired term? Will it be necessary for the Board of Elections to have printed on the ballots some form of notice to the voters as to the length of time the third commissioner will hold office?"

I feel certain of course that there is some provision of law that covers this situation but have been unable to find same. Kindly let me have your opinion covering the above statement of facts."

According to your letter you will elect in November of 1928 two commissioners for the full term of four years and a commissioner to fill the unexpired term of a commissioner who deceased during his term of office last December. Your inquiry is directed to the declaration of candidacy by a candidate as to the term of office for which he is a candidate, whether for the full term of four years or for the unexpired term. You also inquire whether it will be necessary for the Board of Deputy State Supervisors of Elections to have printed on the ballots a designation showing the term of office which the candidate is seeking.

Section 5003, General Code, providing for the content of certificates of nomination requires:

"Besides containing the names of candidates, all certificates of nomination and nomination papers shall specify as to each candidate:

1. The office for which he is nominated; * * *

Section 5017, General Code, providing for the arrangement of tickets and the contents of the ballot provides:

"Every ballot intended for the use of electors, printed in accordance with the provisions of this chapter, shall contain the names of all the candidates whose nominations for any office specified in the ballot have been duly made and not withdrawn in accordance herewith, arranged in tickets or lists under the respective party or political or other designation certified; * * *

Section 5018-1, General Code, provides:

"Where the names of several persons are grouped together upon the ballots as candidates for the same office, the ballot shall contain, immediately above the names of such candidates the words "Vote for not more than _____" (filling the blank space with the number of persons who may lawfully be elected to such office)."

It was held in the case of *State ex rel. vs. Chambers*, 20 O. S. 336, as follows:

"A designation made upon the ballot by the electors of the term of the person voted for, in case such election might be for either of two terms, cannot be ignored by the election officers."

In the case of *State ex rel. O'Donnell, etc., vs. Adam Schafer et al.*, 10 C. D., page 36, the first branch of the headnote is as follows:

"Where three members are to be elected to the board of education, two of them for the full term of three years and one to fill an unexpired term of one year, and the names of six candidates appear on the ballots, but with nothing to indicate which are candidates for the long terms and which for the short term, there is no valid election, and the old board holds over, even though one set of candidates were regularly nominated at a party caucus as candidates for the different terms and properly certified to the board of elections."

Answering your two questions specifically, it is therefore my opinion that:

1. A person desiring to become a candidate for the unexpired term of county commissioner, is required to file a certificate of nomination with his declaration of candidacy stating that he is a candidate for the "unexpired term" which he seeks.

2. In case there are candidates for the office of county commissioner for both the full term and the unexpired term, it will be necessary for the Board of Deputy State Supervisors of Elections to have proper designation immediately above the names of such candidates for the full term "Vote for not more than _____ for the full term of four years" (filling the blank space with the number of persons who may lawfully be elected to fill such office).

3. It will also be necessary for the Board of Deputy State Supervisors of Elections to place immediately above the names of such candidates for the unexpired term "Vote for not more than one for the unexpired term."

Respectfully,
EDWARD C. TURNER,
Attorney General.

1782.

FEES—PAID BY CORPORATION FOR FILING AND RECORDING A CERTIFICATE OF AMENDMENT TO ARTICLES OF INCORPORATION INCREASING THE NUMBER OF SHARES—SECTION 176, GENERAL CODE DISCUSSED.

SYLLABUS:

The fee to be paid by a corporation for filing and recording a certificate of amendment of its articles of incorporation increasing the number of shares which the