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A BOARD OF COUNTY COMMISSIONERS IS UNDER THE MANDATORY DUTY TO PAY TO PERSONS WHO SERVED AS JUSTICES OF THE PEACE BETWEEN 1/1/56 AND 12/31/57 A SUM EQUAL TO THE TOTAL FEES COLLECTED—ANY MONTH DURING SUCH PERIOD THEY DID NOT RECEIVE REGULAR SALARIES AND SUCH BOARD IS NOT AUTHORIZED TO PAY AND SALARIES—§§1907.33, 1907.34, 1907.32, 1907.47—A.H.B. 364 FOR NOV. 10, 1959.

## SYLLABUS:

A board of county commissioners is under the mandatory duty pursuant to Amended House Bill No. 364, effective November 10, 1959, to pay to persons who served as justices of the peace between January 1, 1956 and December 31, 1957, a sum equal to the total fees collected by such persons under Sections 1907.32, 1907.33 and 1907.34, Revised Code, for any months during such period in which such persons did not receive regular salaries for their duties as justices of the peace, and such board is not authorized to pay any salaries pursuant to Section 1907.47, Revised Code, or any other statute to such justices of the peace.

Columbus, Ohio, August 19, 1960

Hon. John T. Corrigan, Prosecuting Attorney  
County of Cuyahoga, Cleveland, Ohio

Dear Sir:

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

“On September 30, 1955 the Legislature enacted Section 1907.47 R.C. which provided that 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 where such office of the Justice of the Peace is situated. Pursuant to this enactment the Board of County Commissioners of Cuyahoga County fixed the annual salaries of the Justices of the Peace in Cuyahoga County. These salaries were paid monthly out of funds appropriated by the Board of County Commissioners for that purpose.

“On May 8, 1957, the Supreme Court of Ohio declared Section 1907.47 R.C. unconstitutional in the case of *Neff vs. Commissioners*, 166 O. S. 360. At that time this office advised

the Auditor and the Treasurer to cease paying the Justices of the Peace the salary which had been fixed by the Board of County Commissioners for them. However, the Justices of the Peace continued to serve without remuneration until December 31, 1957, and paid all fees into the county treasury as required by law. The office and jurisdiction of the Justices of the Peace were abolished by the 102nd General Assembly effective January 1, 1958.

“On November 10, 1959 the Legislature of Ohio enacted Amended House Bill No. 364, being an act to authorize the County Commissioners to compensate any person who served without remuneration as Justice of the Peace after January 1, 1956. This Act authorizes the Commissioners to pay out of the general revenue fund, to any person, or his estate, who served as a Justice of the Peace subsequent to January 1, 1956, a sum equal to the total fees collected by that person. It further provides, however, that where the County Commissioners had appropriated funds as salaries for the Justices of the Peace in lieu of fees, such funds may be paid to such a Justice of the Peace, or his estate, but not to exceed \$5,000. Furthermore, it provides that a Justice of the Peace may not be paid on the basis of any fees received by him for any monthly period during which he received a salary.

“It appears that all of the Justices of the Peace were paid their salaries out of funds appropriated for that purpose for the year 1956. In 1957 the Board of County Commissioners again made an appropriation for the fixed annual salaries for the Justices of the Peace and all of them with but two exceptions were paid their monthly salaries for January to April, 1957, inclusive. Beginning with May 1957, none of the justices of the peace were paid their salaries. At the end of 1957 the appropriation for these salaries was cancelled and the funds returned to the general fund.

“Three Justices of the Peace have now filed claims with the Board of County Commissioners requesting that they be paid their salaries which were fixed by the Board of County Commissioners for the year 1957. We are in doubt as to the correct interpretation of Amended House Bill No. 364, as to whether the Board of County Commissioners is authorized to pay these justices of the peace their salaries, or an amount equal to the total fees collected by them subsequent to January 1st, 1956, which in all instances were much less than the salaries fixed by the Commissioners. Our doubt arises by virtue of the fact that the Board cancelled the appropriation for salaries at the end of 1957 and has made no appropriation this year for such salaries. In other words, are these justices of the peace to be remunerated on the basis of the fixed salaries, or are they limited to the total fees they collected subsequent to January 1, 1956?

“In view of the fact that this is a matter of state-wide interest, your opinion is respectfully requested as to the correct basis on

which the Board of County Commissioners shall compensate these Justices of the Peace for the services they rendered without remuneration during the year 1957.”

Amended House Bill No. 364, of the 103rd General Assembly, effective November 10, 1959, provides as follows :

“Section 1. The board of county commissioners shall pay, out of the general revenue fund, to any person, or his estate, who served as a justice of the peace subsequent to January 1, 1956, a sum equal to the total fees collected by that person under sections 1907.32, 1907.33, and 1907.34 of the Revised Code, as these sections existed between January 1, 1956 and December 31, 1957. Where funds have been appropriated by the board of county commissioners as salaries for justices of the peace, in lieu of fees, such funds may be paid to any such person, or his estate, provided that no person shall be paid more than five thousand dollars.

“No person, or his estate, shall be paid any money as authorized by this section on the basis of any fees received by him for any monthly periods during which he received a salary under former section 1907.47 of the Revised Code.

“No person, or his estate, shall be paid any money as authorized by this section unless such person has fully complied with the provisions of section 1907.021 of the Revised Code.”

The question you raise concerns how a board of county commissioners should compensate those persons who served as justices of the peace from May 8, 1957 to December 31, 1957. You note in your request for my opinion that on May 8, 1957 the Supreme Court of Ohio declared Section 1907.47, Revised Code, the justice of the peace salary act, to be unconstitutional. *Neff v. Board of County Commissioners of Belmont County*, 166 Ohio St., 360. Nevertheless, justices of the peace continued to serve until December 31, 1957, at which time the office and jurisdiction of such officers were abolished. The period of service between May 8, 1957 and December 31, 1957, was without compensation. It was this inequitable situation which Amended House Bill No. 364, *supra*, was designed to cure.

The problem presented is how a board of county commissioners which had appropriated funds for salaries for justices of the peace in 1957 should, at this time, compensate such persons pursuant to Amended House Bill No. 364. You will observe that the first paragraph of this enactment provides that the board of county commissioners *shall* pay from general revenue funds a sum equal to the total fees collected between January 1, 1956 and

December 1, 1957. It also provides that the board of county commissioners *may* pay salaries to such justices of the peace, in lieu of fees, where the necessary funds have been appropriated by the board of county commissioners.

As you state the problem existing in Cuyahoga County, the Board of County Commissioners, in 1957, appropriated funds to pay salaries to justices of the peace but that beginning in May, 1957, no further salaries were paid and at the end of that year the appropriation lapsed and the unencumbered balance reverted to the general fund of the county as specified by Section 5705.40, Revised Code. It would appear, then, that at the present time there are no funds currently appropriated in Cuyahoga County for payment of salaries to justices of the peace.

This lack of presently appropriated funds is not the only obstacle to the payment of salaries to justices of the peace in lieu of fees. In the *Neff* case, *supra*, the Supreme Court held Section 1907.47, Revised Code, the justices of the peace salary provision, unconstitutional for the reason that granting to boards of county commissioners the power to fix annual salaries without any standards or guides by which to determine the amount was an unconstitutional delegation of legislative power and as a general law would not operate uniformly throughout the state. Section 1907.47, Revised Code, was never amended to comply with the *Neff* case, *supra*, nor was any other legislation enacted to permit a board of county commissioners to set such salaries. It must be concluded, therefore, that the constitutional objections of the Supreme Court to the payment of salaries to justices of the peace still remain applicable and any such payments would meet the same ban as expressed in the *Neff* case, *supra*.

It will be noted, however, that under Amended House Bill No. 364, it is mandatory on the board to pay to the former justices of the peace out of general revenue funds a sum equal to the total fees collected during those months between January 1, 1956 and December 31, 1957, in which no regular salary was received by such persons. Only as an alternative to this cause of action, was the salary provision included. In the absence of any amendment to Section 1907.47, Revised Code, the board of county commissioners would be authorized to allow only the payment of fees.

It is, therefore, my opinion and you are accordingly advised that a board of county commissioners is under the mandatory duty pursuant to Amended House Bill No. 364, effective November 10, 1959, to pay to

persons who served as justices of the peace between January 1, 1956 and December 31, 1957, a sum equal to the total fees collected by such persons under Sections 1907.32, 1907.33 and 1907.34, Revised Code, for any months during such period in which such persons did not receive regular salaries for their duties as justices of the peace, and such board is not authorized to pay any salaries pursuant to Section 1907.47, Revised Code, or any other statute to such justices of the peace.

Respectfully,

MARK McELROY

Attorney General