

3480

1. COURT HOUSE—NO AUTHORITY IN LAW WHEREBY COUNTY COMMISSIONERS MAY ORDER COURT HOUSE CLOSED ON SATURDAY MORNINGS.
2. GENERAL ASSEMBLY—LEFT TO SOUND DISCRETION OF COUNTY OFFICERS DETERMINATION OF HOURS FOR OFFICES TO BE KEPT OPEN TO TRANSACT BUSINESS—NO LEGAL INHIBITION AGAINST CLOSING OFFICES SATURDAY MORNINGS.

SYLLABUS:

1. There is no authority in law by which the county commissioners may order the court house closed on Saturday mornings.

2. The General Assembly has left to the sound discretion of the individually elected county officers the determination of the hours during which their offices should be kept open for the transaction of public business, and there is no legal inhibition against such officers closing their respective offices on Saturday mornings.

Columbus, Ohio, February 9, 1954

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

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

“Some time ago the Lucas County Commissioners requested my opinion as to their authority to keep the Court House closed all day Saturdays. I advised them that in my opinion at least some of the services must be made available to the public until noon Saturday and that they would have no authority to close the entire building, and that it would be advisable to seek enabling legislation. As you know, such legislation was proposed at the last session and failed to pass. Since that time the Lucas County Commissioners have insisted that in their opinion they do have such authority, that many of the rural counties have for some time been closing the Court House one day in each week other than Saturday, and have requested that I seek your opinion in the matter.

“In the event you find that the Court House may not be closed on Saturday, I am submitting to you a request from the

Lucas County Treasurer for a further opinion as to whether he may legally close his office all day Saturday.”

Your request, in effect, presents two separate and distinct questions: (1) The authority of the county commissioners to close the entire court house all day Saturday and thus, in effect, close the offices of the other elected officials of the county, and (2) The Authority of an individual county officer to close his *own* office all day Saturday. Although as to question number 2 you inquire only with respect to the county treasurer, the scope of my answer will include the other elected county officers.

I believe that your first question is answered by the holding of one of my predecessors in Opinion No. 6048, Opinions of the Attorney General for 1943, page 236, wherein he said:

“The powers and duties of the several county officers, including the county commissioners, are prescribed by the statutes of Ohio. The proposition that the powers of county officers are only those that are expressly provided by statute or necessarily implied therefrom, is so fundamental and well understood that it hardly needs citation of authority.

“All county officers are, by the terms of Section 1 of Article XVII, Constitution of Ohio, to be chosen by election. It follows that having been chosen by the same authority, viz., the electors, and having only such powers as the Legislature has granted, none of these county officers could have any control over the conduct of any other officer except to the extent that the Legislature may have provided. Except as so limited, each office is an independent agency of the state government. *I find in the statutes of Ohio no authority whatever whereby county commissioners would have the right to fix the time at which other county officers should open or close their offices. * * **”
(Emphasis added.)

As stated in your letter, legislation to grant the county commissioners such authority was introduced in the 100th General Assembly but failed to be enacted into law. This legislation, i.e., Substitute Senate Bill No. 78, would have provided that “The Board of county commissioners of any county may by resolution order the county court house and all the county offices closed on Saturday; * * *.” This bill having failed with passage, it appears clear that the county commissioners do not have such authority.

I turn, therefore, to the question of the authority of a separately elected county officer such as the county treasurer to close his office all day Saturday. In this connection, I find no statute directing that a particular county office remain open during certain days or certain hours.

The obligation to keep public offices open for reasonable periods during each week must be found in the implications that arise from the laws which create such offices, provide for the election or appointment of officers, clerks and other employes, and authorize the erection of office buildings to house the various departments of government. There is in all of these laws a plain legal intent that public business is to be carried on, and that the general public may go to these offices to transact the business which concerns them, and which, in some cases, the law enjoins on them.

The Legislature has seen fit to designate as legal holidays for all purposes, only the following: Labor Day and Armistice Day, Section 5.21, Revised Code; Saturday afternoon, Section 5.30, Revised Code; Election Day afternoon, Section 5.20, Revised Code. In addition to these, the following days are declared to be holidays, but only for the purposes of the statute relating to presentation, protest, etc. of commercial paper, viz, New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Fourth of July, Columbus Day, Thanksgiving Day and Christmas Day, Section 1303.45, Revised Code. From time immemorial, however, it has been the accepted custom for public offices generally to be closed on all or most of the days above mentioned.

It would seem, therefore, that the General Assembly has left to the sound discretion of each individually elected county officer the determination of the hours during which his office should be kept open for the transaction of business, recognizing, as must be the case, his duty to keep it open for such reasonable periods of time as would facilitate the complete transaction of business required therein, or to be answerable to the public who will speak by their ballots. By the same token, the public will expect the various individual officers to so cooperate as to mutual hours of employment of their employes and uniformity of opening and closing county offices so that confusion will not result and county business may be expedited. In other words, as a very practical matter, it would appear that the unanimous consent of all or most of the elected county officers would be necessary before any single county office could effectively close on Saturday mornings.

Some reference should be made to the office of clerk of courts. While a separately elected office, it has been characterized as an arm of the court (State, ex rel. McKean v. Graves, 91 Ohio St., 23), and manifestly the clerk's duties largely consist of carrying out the provisions of law relative to the legal processes, and in performing the orders of the court.

This leads us to the provisions of law relative to the filing in the office of the clerk of certain legal papers. Section 2309.41, Revised Code, provides:

“The answer or demurrer to the petition shall be filed on or before the Third Saturday, the reply or demurrer to the answer, on or before the fifth Saturday, and the demurrer to the reply, on or before the seventh Saturday, after the return day of the summons or service by publication. The answer or demurrer of a defendant to an answer demanding affirmative relief shall be filed on or before the third Saturday, the reply or demurrer thereto on or before the fifth Saturday, and the demurrer to the reply, on or before the seventh Saturday, after such answer is filed.”

Certainly a litigant has the right to file his pleading on the last day permitted by the law, and his failure to file within the time limited by the law, may result in serious damage to him. I doubt the power of the clerk to abridge that right. Even eliminating Section 2309.41 from consideration, I doubt the authority of the clerk, without the consent of the court, to order his office closed all day Saturday and thus to interfere with the proper functioning of the court itself. It is my opinion, however, that the clerk with the consent of the court may close his office on Saturdays. The rights of the parties under Section 2309.41, Revised Code, in my opinion, can be protected by the court in such event by the establishment of a general rule that pleadings due on a given Saturday may be filed the following Monday. The authority for such rule, I believe, is found in Section 2309.42, Revised Code, which provides:

“Upon such terms as are just, the court, or a judge thereof in vacation, for good cause shown, may extend the time for filing any pleading.”

This statute has been held to give the court wide discretion. *Marshall v. Bender*, 54 Ohio App., 36. *Parker v. Haight*, 14 O.C.C., 548.

Since the sheriff in his civil jurisdiction appears also to be in many respects an arm of the court, it would seem that the consent of the court would also be required before closing the civil branch of the sheriff's office on Saturday mornings. I assume, of course, that no effort would be made to close that part of the sheriff's office charged with the enforcement, on a twenty-four hour basis, of the criminal laws.

All that I have said heretofore concerning Saturday is equally applicable to other days of the week. For example, it has been the practice

during recent years in many of the smaller counties of the state to close all business offices one afternoon each week, often on Wednesday or Thursday. It is my understanding that the county offices have also closed on such afternoons. While as heretofore mentioned, there is no authority for the county commissioners to order a court house closed on such afternoons, there does not appear to be any legal impediment to the closing of the court house when all of the county offices concerned agree thereto and close their individual offices.

In conclusion, and in specific answer to your question, it is my opinion :

1. There is no authority in law by which the county commissioners may order the court house closed on Saturday mornings.

2. The General Assembly has left to the sound discretion of the individually elected county officers the determination of the hours during which their offices should be kept open for the transaction of public business, and there is no legal inhibition against such officers closing their respective offices on Saturday mornings.

Respectfully,

C. WILLIAM O'NEILL

Attorney General