

OPINION NO. 73-081

Syllabus:

The prohibition expressed in Article IV, Section 6 (B) of the Ohio Constitution, relating to the holding of an office of profit or trust, applies to all judges. (Opinion No. 69-131, Opinions of the Attorney General for 1969, approved and followed.)

To: Vincent B. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio
By: William J. Brown, Attorney General, August 17, 1973

I have before me your request for an opinion, which reads in part as follows.

On October 2, 1969, your predecessor as Attorney General in Opinion No. 69-131, ruled that a judge of a county court may not be a referee in the probate division, nor a referee in a division of domestic relations of a court of common pleas. An examination of that opinion reveals that your predecessor placed great reliance upon the Modern Courts Amendment which became effective May 7, 1968, and held that its provisions were applicable to county court judges.

In view of the fact that the Ohio Supreme Court in State, ex rel. Wallace vs. City of Celina, 29 O.S. 2nd 109, has held that Article IV, Section 6 (B) of the Ohio Constitution pertains only to the Ohio Supreme Court, the Courts of Appeals, and the Courts of Common Pleas, possibly a review of Opinion 69-131 is in order.

Article IV, Section 6 (B) of the Constitution of Ohio, which is part of the "Modern Courts" Amendment, reads as follows:

(P) The judges of the supreme court, courts of appeals, and of the courts of common pleas, shall, at stated times, receive, for their services such compensation as may be provided by law, which shall not be diminished during their term of office. The compensation of all judges of the supreme court, except that of the chief justice, shall be the same. The compensation of all judges of the courts of appeals shall be the same. Common pleas judges shall receive such compensation as may be provided by law. Judges shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this state, or of the United States. All votes for any judge, for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people shall be void.

(Emphasis added.)

On the basis of the above emphasized language my predecessor reached the following conclusion in Opinion No. 69-131, Opinions of the Attorney General for 1969.

A judge of the county court may not be a referee in the probate division nor a referee in a division of domestic relations of a court of common pleas.

It is clear that the emphasized language of the amendment would, upon first impression, foreclose the possibility of a contrary result.

It is now suggested, however, that in view of the restricted interpretation given to Article IV, Section 6 (B) in the recent case of State, ex rel. Wallace v. City of Celina, 29 Ohio St. 2d 109 (1972), the decision reached in Opinion No. 69-131, supra, should be reconsidered.

The Wallace case involved the question of whether a municipal court judge is eligible to receive an increase in salary during his term of office. The pivotal issue was whether Article IV, Section 6 (B) applied to a municipal court judge, relieving him from operation of the prohibition relating to salary increases expressed in Article II, Section 20 of the Ohio Constitution. In deciding that the provision in question did not apply to a judge of the municipal court, the court held, in the second branch of the Syllabus, as follows:

The language of Section 6 (B) of Article IV of the Ohio Constitution relating to the compensation of judges for their services as judges of the supreme court, courts of appeals and courts of common pleas is explicit. The language does not include, nor does it apply to, municipal court judges. (Emphasis added.)

The holding is clear inasmuch as it restricts the application of the provision to the types of judges specifically enumerated. It is to be noted, however, that the construction placed upon Article IV, Section 6 (B) by the Supreme Court extends only to the provision relating to the compensation of judges.

Some of the language in the decision, however, may appear contradictory, because it seems to refer to Section 6 (B) as a whole, not merely to the provision relating to compensation. This language is found in the discussion at 29 Ohio St. 2d 112-113, which reads as follows:

The language of Section 6 (B) is explicit. It specifically delineates that the compensation of judges of the Supreme Court, Courts of Appeals and Courts of Common Pleas "shall not be diminished during their term of office." Municipal Court judges are not mentioned in Section 6 (B). In view of the clarity of the language of Section 6 (B) this court is compelled to give effect to the words used therein. When the language of an enactment " * * * is plain and unambiguous and conveys a clear and definite meaning

there is no occasion for resorting to rules of statutory interpretation." In the instant case there is no requirement to resort to rules of construction. Sears v. Weimer (1944), 143 Ohio St. 312; Cleveland Trust Co. v. Eaton (1970), 21 Ohio St. 2d 125, 138.

To construe Section 6 (B) to include Municipal Court judges would add words to that section which are not therein contained and violate the rule that in determining legislative intent it is the duty of this court to give effect to the words used, not to delete words used or to insert words not used." Columbus-Suburban Coach Lines v. Pub. Util. Comm. (1969), 20 Ohio St. 2d 125.

The fact that Municipal Court judges are subject to other provisions of Article IV, e.g., to Section 6 (C) (see State, ex rel. Graves, v. Brown [1969], 18 Ohio St. 2d 61), does not warrant a construction of Section 6 (B) which would go beyond the effect of the words used in that section.

Read as a whole, however, this language refers only to the part of Section 6 (B) relating to compensation of judges. The second sentence of the above quotation makes this fact clear.

Moreover, the paragraph which immediately follows the passage quoted above leaves no doubt as to the holding of the decision. At 29 Ohio St. 2d 113, the Court states:

The court concludes, therefore, that the part of Section 6 (B) of Article IV relating to compensation of judges for their services as judges of the Supreme Court, Courts of Appeals and Courts of Common Pleas does not apply to Municipal Court judges. (Emphasis added.)

This specific restriction is repeated in the Syllabus, quoted earlier in this Opinion. Thus, whatever the implication of certain language of the decision when read out of context, the Court clearly took care to restrict its discussion to the provision of Section 6 (B) relating to compensation of judges.

Consequently, the Wallace decision does not contain dictum which calls into question my predecessor's conclusion in Opinion No. 69-131, supra. I concur in that conclusion, on the basis of reasoning similar to that of the Supreme Court in the Wallace case: the plain terms of the statute (or constitutional provision) should be given effect. (See the quotation from 29 Ohio St. 2d 112-113, supra.) Unlike the provision of Section 6 (B) relating to compensation, the prohibition against holding another office of profit or trust applies to "judges", not merely to judges of some courts. I see no indication that the term "judges" refers only to those types of judges mentioned in the preceding language of Section 6 (B), i.e., judges of the Supreme Court, Courts of Appeals, and Courts of Common Pleas. If the drafters had meant to refer to those judges, they could easily have referred to "such

judges," or specified a certain type of judges. Since they did not, I must follow my predecessor in advising that the prohibition against holding another office applies to all judges, not merely to those of the Supreme Court, Courts of Appeals, and Courts of Common Pleas.

In specific answer to your question, it is my opinion and you are so advised that the prohibition expressed in Article IV, Section 6 (B) of the Ohio Constitution, relating to the holding of an office of profit or trust, applies to all judges. (Opinion No. 69-131, Opinions of the Attorney General for 1969, approved and followed.)