

6256

JUSTICE OF PEACE—ELECTIONS CAN NOT BE SET PRIOR
TO NOVEMBER ELECTION, 1957—SECTION 1907.02 RC—
ARTICLE XVII, SECTION 1, CONSTITUTION OF OHIO.

SYLLABUS:

Under the provisions of Article XVII, 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.

February 16, 1956

Hon. Blenn L. Fortune, Prosecuting Attorney, Carroll County
Carrollton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Revised Code, Section 1907.02, provides, among other things, that the Commission on Justice Courts of the County shall determine the number of Justices of the Peace in such District and the day of election of such Justices.

“The Constitution of the State of Ohio, Article 17, Paragraph 1, entitled ‘Elections’ reads that elections for State and County officials shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officials shall be held on the first Tuesday after the first Monday in November in the odd numbered years.

“We would appreciate your opinion on the following question:

“After the Commission on Justices Courts has established one or more Justice Court Districts as provided by Revised Code 1907.01, would the election of a Justice of the Peace for said District or Districts be classified under the above entitled Article of the Constitution ‘all other elective officials’ so that said election would have to be held on the first Tuesday after the first Monday in November in odd numbered years, or, assuming for example, that an entire County was constituted by the Commission as a Justice Court District, then would said election fall within the classification of a County office so that said election would have to be held on the first Tuesday after the first Monday in November in the even numbered years.”

Section 1907.02, Revised Code, referred to in your inquiry, provides in part as follows:

“When a new justice court district is created, the commission on justice courts of the county shall determine the number of justices of the peace for such district, and the day of election of such justices. * * *”

As you suggest, however, this provision is necessarily limited by Section 1, Article XVII of the Constitution of Ohio which provides:

“Elections for state and county officers shall be held on the first Tuesday after the first Monday in November in the even numbered years; and all elections for all other elective officers shall be held on the first Tuesday after the first Monday in November in the odd numbered years.”

Thus the question here presented is whether the office of justice of the peace is (1) a county office, or (2) included within the term “all other elective officers”, as this language is used in the provision above.

Justices of the peace have historically been regarded as township officers, and the statute, Section 1907.04, Revised Code, prior to January 1, 1956, the effective date of Amended Senate Bill No. 319, referred to the office as being “established in each township.” As to the effect of Amended Senate Bill No. 319, supra, on the status of these officers as township officers, I concluded in my Opinion No. 5805, Opinions of the Attorney General for 1955, dated September 29, 1955:

“* * * 5. Amended Senate Bill No. 319, 101st General Assembly, does not abolish any existing office of justice of the peace, * * *”

On this point I said in the course of that opinion:

“Here it is proper to observe that this enactment cannot be regarded as effecting the abolition of the existing office of justice of the peace and the creation of a new office, for there is not only no express provision to that effect, but there is, in Section 1907.03, Revised Code, an express provision against depriving any justice of the peace his commission during the term for which he is elected. In the absence of any indication to the contrary, I am impelled to the conclusion that this inhibition operates in favor of justices presently holding office for a term extending to December 31, 1957. Moreover, since it is beyond the authority of the legislature, under Article II, Section 27, Ohio Constitution, to exercise any power of appointment, the ‘continuation in office’ provision thus made could be valid only in the event that there

will be no abolition of the existing office and the creation of a new one."

I am aware of the holding of the court in *State ex rel. Flinn v. Wright* 7 Ohio St., 333, that the repeal of an act by which an office is created has the effect of abolishing such office. In the instant case, however, the section involved, Section 1907.04, supra, was re-enacted in terms relating to an office of identical designation, the territorial jurisdiction of which in criminal cases remained unchanged, the incumbents of which could not constitutionally be elected until November 1956 even if it were to be considered a county office, and with no provision for a transition from the old scheme to the new. In these special circumstances, in order to avoid the absurd consequences resulting from a hiatus during which the whole operation of these minor courts would be entirely suspended, a result obviously not intended by the General Assembly, I am impelled to adhere to my conclusion that the office here in question was not abolished by the enactment in question, and that it is, as stated in my Opinion No. 6122, Opinions of the Attorney General for 1955, dated December 29, 1955, "still essentially a township office." It follows, therefore, that under the provisions of Article XVII, 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.

Respectfully,

C. WILLIAM O'NEILL
Attorney General