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COMMISSION ON JUSTICE COURTS—1907.01 RC—REDUCTION OF NUMBER OF JUSTICES OF THE PEACE OPERATIVE ONLY WHEN TERM IS ENDED BY DEATH—NO VACANCY FOR WHICH AN APPOINTMENT MAY BE MADE UPON DEATH OF ONE SUCH JUSTICE—1907.03 RC.

SYLLABUS:

Where a commission on justice courts has acted as provided in Section 1907.01, Revised Code, to reduce to one the number of justices of the peace in the district concerned, and where two such justices continue to serve in such district under the provision, in Section 1907.03, Revised Code, that "no justice may be deprived of his commission" by such action, such reduction becomes fully operative upon the death of one such justice during his term, and no vacancy in such office exists in such district which may be filled by appointment.

Columbus, Ohio, March 25, 1957

Hon. Robert E. Culbert, Prosecuting Attorney  
Sandusky County, Fremont, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The undersigned requests your formal opinion upon the interpretation of Section 1907.04 of the Revised Code of Ohio concerning the following set of facts:

"The Commission on Justices' Courts in this county districted the county under Section 1907.02 of the Revised Code, as amended, and in District No. 1 allotted one justice of the peace. At that time said district had two elected justices. Recently one of said justices died and there is a year yet to run under his term.

"The question now arises as to whether or not the term of office is abolished under the present law or whether the office exists, and if the office still exists, should the vacancy be filled by appointment of the Commission?"

Under the existing provisions of statute the number of justices in each justice court district is fixed by a commission as provided in Section 1907.01, Revised Code. This section reads:

“There is hereby created in each county of the state a commission to be known as the commission on justice courts consisting of the presiding judge of the court of common pleas, the probate judge, and the president of the board of county commissioners.

“Such commission shall establish one or more justice court districts which together shall include all territory within the county not subject to the territorial jurisdiction of any municipal court. Each district shall consist of the territory of one or more whole townships. The commission may consolidate or otherwise modify such districts from time to time. The commission shall determine and may amend from time to time the number of offices of justices of the peace in each district.”

It seems evident that the commission here in question acted under this authorization in the action you mention whereby they “allotted one justice of the peace” to the district concerned.

It is to be noted, however, that there is a limitation on the commission’s power in this regard. Thus, in Section 1907.03, Revised Code, it is provided:

“When it appears to the commission on justice courts of a county that there is not a sufficient number of justices of the peace in a justice court district thereof the commission in its discretion may establish one or more additional offices of justice of the peace in such district, and determine the day of election for each such justice of the peace. If it appears to the commission that the number of justices should be decreased, the commission may reduce the number of justices. No justice may be deprived of his commission until the expiration of the term for which he was elected.”

These provisions, considered together, make it plain that the commission’s action in decreasing the number of justices within a district cannot become effective, as a practical matter, so long as there is a justice in office who would be deprived of his commission thereby.

In the case at hand there is no incumbent justice who would be deprived of his commission by the action of the commission on justice courts in reducing to one the number of justices in the district. I conclude, therefore, that such action has become effective to reduce the number of such offices to one in the district concerned, and there is thus no vacancy to be filled by appointment.

In specific answer to your query, therefore, it is my opinion that where a commission on justice courts has acted as provided in Section

1907.01, Revised Code, to reduce to one the number of justices of the peace in the district concerned, and where two such justices continue to serve in such district under the provision, in Section 1907.03, Revised Code, that "no justice may be deprived of his commission" by such action, such reduction becomes fully operative upon the death of one such justice during his term, and no vacancy in such office exists in such district which may be filled by appointment.

Respectfully,  
WILLIAM SAXBE  
Attorney General