

3061

CONSTABLE, SPECIAL — APPOINTMENT; §1907.201 R.C. —
BOND, GIVING OF NOT REQUIRED.

SYLLABUS:

A special constable appointed under the provisions of Section 1907.201, Revised Code, is not required to give a bond.

Columbus, Ohio, November 14, 1958

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

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

“The trustees of Austintown Township, this county, have made a request that I secure:

“ ‘an opinion from the Attorney General as to whether the bond of a special constable appointed by a county judge under the provisions of R.C. 1907.201 should be approved by the appointing judge or the township trustees.’

“The trustees feel that inasmuch as they have nothing whatsoever to do with the selection, appointment or compensation of such constable, that the bond should be approved by the county judge making the appointment.”

Section 1907.201, Revised Code, provides :

“Upon the written application of the director of public works or of three freeholders of the county in which a county court judge resides, such judge may appoint one or more electors of the county special constables who shall guard and protect the property of this state, or the property of such freeholders, and the property of this state under lease to such freeholders, designated in general terms in such application, from all unlawful acts, and so far as necessary for that purpose, *a constable so appointed has the same authority and is subject to the same obligations as other constables.*” (Emphasis added)

Section 1907.211, Revised Code, provides :

“The judge of a county court appointing a constable as provided in section 1907.201 of the Revised Code, shall make a memorandum of such appointment upon his docket, and such appointment shall continue in force for one year, unless such judge revokes such appointment sooner. A constable appointed under this section and section 1907.201 of the Revised Code, shall be paid in full for his services, shall be paid in full for his services by the freeholders for whose benefit he was appointed, and shall receive no compensation except from such freeholders.”

The question asked by your inquiry as to whether the appointing judge or the township trustees should approve the bond of a special constable appointed under the provisions of Section 1907.201, *supra*, rests on the assumption that the above quoted sections of the Revised Code require a bond to be given. If this assumption is not justified, your question, by necessity, is moot.

Since it is not expressly required, in either section of the Revised Code, quoted above, that the special constable give a bond, it is apparent that the justification for your assumption must depend on whether the requirement is manifested by other sections of the Revised Code, or, if not, whether the necessity of a bond can be properly inferred from the emphasized portion of Section 1907.201, *supra*, as set forth above.

Section 509.02, *supra*, provides :

“Each constable, before entering upon the discharge of his duties, shall give bond to the state in a sum of not less than five hundred nor more than two thousand dollars, conditioned for the faithful and diligent discharge of his duties, and with sureties resident of the township. The amount of such bond and its sureties shall be approved by the board of township trustees. Such bond shall be deposited with the township clerk.”

In Section 509.02, *supra* the requirement of giving a bond is clearly intended as a prerequisite to the assumption of the duties of a constable. See *Barrett v. Reed*, 2 Ohio, 409.

The possible applicability of Section 509.02, *supra*, quoted above, is dependent upon the meaning of the words “Each constable.” Are these words used in a universal sense, that is, do they refer to all and any type constable, or are they being used to refer to each elected constable as provided for in Section 509.01, Revised Code?

Section 509.03, Revised Code, provides for the appointment of a suitable person by the board of township trustees when, on certain enumerated contingencies, a vacancy occurs in the office of elected constable. This section of the Revised Code provides that “The constable so appointed shall * * * give a bond as required by Section 509.02 of the Revised Code.”

Section 509.04, Revised Code, provides in part that a justice of the peace may appoint a constable for a special purpose on certain enumerated contingencies.

The last paragraph of Section 509.04, *supra*, provides :

“Such justice of the peace and his sureties shall be liable as surety for any neglect of duty or illegal proceedings on the part of any constable so appointed by him.”

It should be noted that Section 509.04, *supra*, refers to justice of peace. I am aware that the legislature, in eliminating this office and creating county courts, did not expressly mention this section, but I need not, and do not, express an opinion on the problems thereby raised.

Sections 509.03 and 509.04, *supra*, strongly suggest that the words “Each constable” in Section 509.02, *supra* were intended by the legislature to mean each elected constable; that it was not the legislative intent to require all and any type constables to give a bond under Section 509.02,

supra. If such were not the intention of the legislature, then the express requirement of a bond in Section 509.03, *supra*, and the requirement that the appointing justice of the peace shall be liable as surety in Section 509.04, *supra*, would be unnecessary and tautological—a result which is the last extremity of judicial construction and one which the courts should avoid whenever an equally susceptible construction is available. 37 Ohio Jurisprudence, 614-619.

It is significant that the words “Each constable” were also used in Section 509.01, *supra*, and there, clearly, they refer to each elected constable.

Concluding on the basis of the above that your inquiry is not governed by Section 509.02, *supra*, and, in my examination of other chapters and sections of the Revised Code of possible applicability, having been unable to find any other provisions that would require a special constable appointed under Section 1907.201, *supra*, to give a bond, I now shall consider the problem of whether the necessity of a bond can be properly inferred from the emphasized portion of Section 1907.201, *supra*.

The language of a statute is, of course, its most natural expositor, and when the language of a statute is clear and unambiguous, there is no occasion to resort to the rules of statutory interpretation, but when the language of a statute is ambiguous, as here, where the language of the emphasized portion of Section 1907.201, *supra* is sufficiently doubtful to justify, at the very least, a contention that ambiguity exists, then it is proper to resort to inference in order to dissolve the ambiguity and ascertain the legislative intent. This rule, however, has its limitations; one must be careful in its utilization not to transcend the boundary between proper implication and improper legislation by the courts.

It has been set forth above, that the requirement of giving a bond, under the provisions of Section 509.02, *supra*, is a prerequisite to the assumption of the duties of a regularly elected constable. In Section 509.04, *supra*, the justice of the peace and his sureties are held liable as surety for the appointed constable’s neglect of duty. Clearly, the necessity of giving a bond is not part of the obligations of these constables.

In neither Section 1711.35, Revised Code, which provides that a county judge may appoint a constable to assist in keeping the peace during the annual meeting of an association promoting social or literary inter-

course, nor Section 2931.06, Revised Code, which provides that a county judge may appoint special constables when the constables in certain designated townships are insufficient to maintain the peace, is there express language necessitating a bond or ambiguous language from which the requirement could be inferred.

In Section 509.03, *supra*, it is expressly provided that the appointed constable shall give a bond. The very fact that the legislature considered it necessary to include this express provision serves to establish that the requirement of giving a bond was not considered by them as a necessary portion of the obligations of constables.

In the *State of Ohio ex rel. v. Robins*, 71 Ohio St., 273, the court, while holding unconstitutional a statute relating to the giving of surety bonds, said, at page 291 :

“It is the undoubted right of the general assembly to require bonds to be given ‘for the faithful performance of official or fiduciary duties, or the faithful keeping, applying or accounting for funds or property, or for one or more such purposes,’ and to make reasonable requirements as to execution, approval and security to effectuate fully the purposes thereof. * * *”

The correctness of the above quoted portion of the *Robins* case, *supra*, in my opinion, cannot be doubted. There is, however, a definite difference between the legislature’s right to require a bond to be given and the actual exercising of this right.

The passage quoted from the *Robins* case, *supra*, states that the legislature has the right “to make reasonable requirements as to execution, approval and security to effectuate fully the purposes” of a bond. It thus seems clear that a legitimate source of inquiry into whether the legislature has, in actuality, exercised its right to require a bond, is to ascertain whether such “reasonable requirements,” in fact, have been provided.

It is obvious that Sections 1907.201 and 1907.211, *supra*, contain no procedure for “execution, approval and security.” It has been concluded above, that Section 509.02, *supra*, is not applicable to your inquiry, and the language employed by the legislature in the quoted portion of Section 509.04, *supra*, clearly manifests the intent that the justice’s responsibility does not extend beyond the confines of this section.

Concluding on the basis of the above that the necessity of a bond cannot be properly inferred from the emphasized portion of Section

1907.201, *supra*, quoted above, and having already concluded that no other section of the Revised Code, controls your inquiry, it is my opinion that a special constable appointed under the provisions of Section 1907.201, *supra*, is not required to give a bond.

Since your inquiry as to whether the appointing judge or the township trustees should approve the bond of a special constable appointed under the provisions of Section 1907.201, *supra*, rests on an unjustified assumption, your question by necessity, is moot.

Accordingly, it is my opinion, and you are so advised, as follows :

A special constable appointed under the provisions of Section 1907.201, Revised Code, is not required to give a bond.

Respectfully,
WILLIAM SAXBE
Attorney General