

6848

1. MUNICIPAL COURT — LEGISLATIVE ENACTMENT — JUDGE AT TIME OF ELECTION OR APPOINTMENT SHALL RESIDE IN CITY OR TOWNSHIP WHERE COURT ESTABLISHED — JUDGE SUBJECT TO SAME DISABILITIES AND CAUSES FOR REMOVAL AS COMMON PLEAS COURT JUDGE — WHERE LATER, TERRITORY OF TOWNSHIP OUTSIDE CITY INCORPORATED INTO VILLAGE — WHERE MUNICIPAL JUDGE, AT TIME OF ELECTION AND SUBSEQUENTLY, RESIDED IN TOWNSHIP THUS INCORPORATED, HE DOES NOT LOSE RESIDENCE AND IS NOT DISQUALIFIED OR SUBJECT TO REMOVAL.
2. CONNEAUT, ASHTABULA COUNTY — JURISDICTION OF MUNICIPAL COURT — COUNTY-WIDE POWER TO INQUIRE INTO FELONIES — OFFICES, JUSTICE OF PEACE AND CONSTABLE ABOLISHED — EFFECT OF SUBSEQUENT INCORPORATION OF TOWNSHIP AS A VILLAGE — SECTIONS 1579-1177 AND 1579-1231 G. C.

SYLLABUS:

1. Where a municipal court is established by the legislature having jurisdiction throughout a city and the township of which such city is a part, and the act providing for such court provides that the judge of such court at the time of his election or appointment shall reside in such city or township, and shall be subject to the same disabilities and may be removed for the same causes as the judge of the court of common pleas; and thereafter all of the territory of such township outside said city was incorporated into a village, a judge of such court who at the time of his election and ever since resided in the portion of said township thus incorporated does not thereby lose his residence and is not disqualified or subject to removal.

2. By the provisions of Sections 1579-1177 to 1579-1231, General Code, a municipal court was created in and for the city of Conneaut and township of Conneaut in the county of Ashtabula, said city being located within the township of Conneaut. Such court was given jurisdiction of all offenses under any ordinance of said city and of all misdemeanors committed within said city or township; also civil jurisdiction within said city and township, and county-wide power to inquire into felonies. The offices of justice of the peace and constable were abolished. The subsequent incorporation as a village of the portion of said township not lying within said city did not affect or modify in any respect, the jurisdiction conferred on said court by said act.

Columbus, Ohio, April 22, 1944

Hon. Roland Pontius, Prosecuting Attorney
Jefferson, Ohio

Dear Sir:

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

"The Township of Conneaut, Ashtabula County, voted on April 7th, 1944, to incorporate the entire township, except that portion within the boundaries of the City of Conneaut, as a village under the name of 'The Village of Lakeville', in accordance with the provisions of Sections 3526 to 3531, General Code, and certain questions have arisen as to the residence of the Judge of the Municipal Court of Conneaut and as to the jurisdiction of the Municipal Court over the newly created village, concerning which we desire to have the benefit of opinions from your office.

First, as to the residence of the Judge. Section 1579-1178 G. C. (the Municipal Court of Conneaut, Act) provides that 'the municipal judge, at the time of his election or appointment, shall be a qualified elector and resident of the city or township of Conneaut'.

The present judge has served continuously since the establishment of the Court, January 1st, 1930, and when first elected was, and now is, an elector and resident of the Township of Conneaut, which has now been incorporated as the Village of Lakeville.

Sec. 1179-1181 G. C., provides that "the municipal judges shall be subject to the same disabilities and may be removed from office in the same manner and for the same reasons as the Judge of the Court of Common Pleas".

Sec. 1688 G. C., provides that if a Judge of Common Pleas Court removes his residence from his county, he shall be deemed to have resigned and vacated his office.

In the case of *State of Ohio ex rel. v. George W. Choate*, 11 Ohio 511, it is held that 'the legislature may change the boundaries of a county, and when such change places an associate judge within the limits of another county, who does not, within a reasonable time, remove into the limits of the county for which he was appointed, he forfeits his office'.

In *State ex rel. Hartshorn v. Walker*, 17 Ohio 135 it is stated in the syllabus:

1. On the formation of a new county, the county commissioners of any of the counties from which the new county is formed, who reside within the limits of such new county, cease to be commissioners of the old county unless they remove within it. p. 140.

2. County commissioners must reside within the limits of the county of which they are commissioners and the erection of a new county, in which their residences are included, makes them residents of such new county, and non-residents of the old county. p. 141.'

In the situation concerning which we ask an opinion, there has been no annexation of territory to other territory, or change of boundaries, but the electors themselves in the township have incorporated the entire township, except the city, into a village.

The newly created village, without doubt, will ask the next Legislature to amend the Municipal Court of Conneaut Act so as to include it within the jurisdiction of the Court.

Under these circumstances, our first question is: Is it necessary that the municipal Judge remove his residence into the City of Conneaut in order to retain his office, and, if so, how soon must such removal be made?

Our second request is for an opinion as to what jurisdiction, civil and criminal, the Municipal Court of Conneaut has, from the present time until such time as the Legislature may amend the Act which created it, over the territory of the newly incorporated village of Lakeville.

Sec. 1579-1183 G. C., provides that the Municipal Court of Conneaut 'shall have jurisdiction of any offenses under any ordinances of the City of Conneaut, Ohio, or any misdemeanors committed within the limits of the city and township of Conneaut, to *hear and determine* the same and *impose the* prescribed penalty.'

Said section further provides that the court shall have 'ordinary civil jurisdiction within the limits of said city and township of Conneaut' in actions therein enumerated.

Jury commissioners are appointed and juries summoned from both the city and township.

Sec. 1579-1231 provides that the jurisdiction of all justices of the peace in said City of Conneaut and Conneaut Township in all civil and criminal matters shall cease, and no judge of the criminal court, justice of the peace or constable shall thereafter be elected in said Conneaut Township.

Under these circumstances, does the jurisdiction of the Municipal Court of Conneaut continue, in criminal and civil cases, over the newly incorporated village? Or, must the Legislature authorize such continued jurisdiction? In that latter event, for a considerable period, in certain cases, residents of the Village would have no court to which they could legally resort.

These questions seem to present for an early solution, and we would be greatly accommodated by and would appreciate your opinions at as early a date as the large demands on your time will permit."

Referring to the Act creating the Municipal Court of Conneaut, I note the provisions of Section 1579-1177, General Code, reading as follows:

"That there be and hereby is created a court of record in and for the city and township of Conneaut, in the county of Ashtabula and state of Ohio, to be styled as 'the municipal court of Conneaut, Ohio,' hereinafter designated and referred to as the 'municipal court.'"

The pertinent portion of Section 1579-1178, General Code reads:

"Said municipal court shall be presided over by one judge to be designated herein as the 'municipal judge,' whose office is hereby created and whose term of office shall be for a period of four years. Said municipal judge, at the time of his election or appointment, shall be a qualified elector and resident of the city or township of Conneaut, county of Ashtabula, state of Ohio, * * *."

Section 1579-1183, General Code, referring to the jurisdiction of the court, reads in part as follows:

"Said municipal court herein established shall have jurisdiction of any offenses under any ordinance of the city of Conneaut, Ohio, or any misdemeanor committed within the limits of the city and township of Conneaut, Ashtabula county, Ohio, to hear and determine the same and impose the prescribed penalty; * * * and in addition thereto said municipal court shall have ordinary civil jurisdiction within the limits of said city and township of Conneaut, in said county of Ashtabula, and state of Ohio, in the following cases: * * *."

I note from your statement of facts that on April 7, 1944, the Township of Conneaut voted to incorporate the entire township except that portion within the boundaries of the City of Conneaut as a village under

the name of "The Village of Lakeville", in accordance with the provisions of Section 3526 et seq. of the General Code. It would follow, therefore, that the entire territory of Conneaut Township is now covered by the two municipal corporations. If, as a result of this fact, the Township of Conneaut is completely destroyed, we might have a question of some difficulty in determining the effect upon the law creating the Municipal Court in so far as that court by the terms of the act was to have jurisdiction of the territory of the township lying outside of the City of Conneaut. If, however, the township was not utterly destroyed the question would not seem to present serious difficulty. Townships appear to have existed prior to the Ohio Constitution. The Constitution of 1802 recognizes their existence and authorizes the legislature to provide for the election of their officers, and for justices of the peace in each township. The present constitution deals with these matters and also authorizes the legislature to prescribe the powers of townships as to taxation. Outside of these provisions, the organization and control of townships seems to have been left to the general legislative power of the legislature.

It appears to me to be fundamental that the legislature, and it alone, has power to provide for the alteration or abolishing of townships, whose existence and boundaries seem by our laws to be assumed. The legislature has seen fit to provide means whereby under certain circumstances the boundaries of townships may be altered but no power has been conferred on any person or official body entirely to do away with an established township, and no action on the part of any authority or tribunal could accomplish that result. Section 3512, General Code, sets out certain circumstances under which the official organization of a township may be affected.

This section reads as follows:

"When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records and documents of such township shall be delivered to the council of such city or village. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation."

It will be noted that this provision is predicated on the fact that the corporate limits of a *city or village* become identical with those of a township. I do not find that precise situation in the case set out in your communication, and so far as I can find, the legislature has not anticipated or provided for precisely the circumstances involved in your letter. Therefore, I am not disposed to extend the provisions of Section 3512 beyond its express terms. However, even if we assume that that section would be applicable to the situation which you present where the corporate limits of *two municipal corporations* together have become identical with those of a township, it still does not follow, considering the language of the statute, that the *township* is abolished for all purposes. All the section does provide is that "all township *offices* shall be abolished."

It was held in the case of *State, ex rel. v. Ward*, 17 O. S., 543;

"On the organization of a city of the second class divided into wards, the boundaries of which city are not coterminous with those of any township, the territory within such city does not cease to be a part of the township or townships within the limits of which it is situate."

The court in its opinion, at page 546, said:

"Neither as a matter of theory or practice, is there any necessary difficulty in the existence and harmonious working of a civil township organization, and, at the same time, of a city organization within the limits of such township, or within the limits of more than one township; and the statutes nowhere provide, either expressly or by just implication, that, on the organization of a city within the limits of a township or townships, the territory within the city limits shall cease to be a part of the township or townships from which the same was taken. But there are clear indications of a contrary legislative intent."

It will be noted further that by the terms of Section 3512, the offices of justice of the peace and constable are preserved. The fact that the Conneaut Municipal Court Law, in Section 1579-1231 does away with the jurisdiction of all justices of the peace of the city of Conneaut and Conneaut Township, and provides that no justice of the peace or constable shall thereafter be elected therein, does not alter the principle which seems to stand out in Section 3512, General Code, that the township was not to be abolished by the mere incident of becoming

co-extensive with a municipal corporation. And if it was not abolished by that circumstance, then it certainly follows that it was not abolished because it became co-extensive with two municipal corporations.

In the case of *McGill v. State*, 34 O. S., 228, the court at page 251 had occasion to refer to the statute then in force, which was quite similar to Section 3512, General Code, and referring to Section 475 of the Municipal Code as it then existed, the court said at page 251 of the opinion:

“That section provides, that ‘whenever the corporate limits of any city or incorporated village become identical with any township, then and thereafter the office of township trustee, township treasurer, and township clerk, shall be abolished and cease; and all the powers and duties of trustees of townships conferred or prescribed by law shall vest in and be performed by the council, except as to binding out apprentices, and administering relief to the poor’.

The act of May 7, 1872 (69 Ohio L. 23), preserves the corporate existence of such township for the sole purpose of electing justices of the peace and constables, evidently to meet the constitutional requirement that justices of the peace shall be elected by townships. But for all other purposes the township organization in this class of cities and villages is abolished.”

I am not disturbed by the language of the last sentence above quoted because it is the “township organization” to which the court’s statement is directed, and it appears to me that the reference is to the various township officers and their functions rather than to the extent of the township as a geographical entity. Furthermore, the court indicates that the corporate existence of such township is preserved for the purpose of providing the local judicial officers consisting, as it does, generally, of justices and constables. In the Conneaut Act the legislature saw fit by express provision to substitute the municipal court of Conneaut city and township for these local judicial officers, and for that purpose it might well be said that the identity of the township was preserved against all contingencies such as its possible incorporation into one or more municipalities.

The Constitution, Art. IV, Sec. 1, provides relative to the establishment of courts:

“The judicial power of the state is vested in a supreme

court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.”

Municipalities have no power by charter or otherwise to create a municipal court. *State, ex rel. v. Hutinspiller*, 112 O. S., 68; *State, ex rel., v. Bernon*, 127 O. S. 204.

Independent of the proposition which I have been discussing, I am of the opinion that the incorporation of the village of Lakeville could not have the effect of amending the act of the legislature in establishing the court in question and defining its territorial jurisdiction. The legislature in enacting the Conneaut Municipal Court Act clearly intended to provide a tribunal for the territory which was then occupied by the city of Conneaut and the unincorporated remainder of Conneaut township. Nothing has occurred to indicate any change of the legislative intent. If it should be claimed that the action of citizens in a portion of Conneaut township in deciding to incorporate as a village could have the effect of disturbing or changing the jurisdiction of a court established in a definite area by the legislature, we would have the anomalous situation of a virtual repeal of a legislative act by the action of citizens aimed at the accomplishment of a totally different purpose and in no wise authorized by any law to override the legislature.

In my opinion the descriptive words used in the act “city and township of Conneaut” have not in any way lost their meaning as determining the territorial bounds of the jurisdiction of the municipal court, and it remains precisely as enacted by the legislature.

The same reasoning would apply to the residence of the judge of that court. It is provided by law that “he shall be a qualified elector and resident of the city or township of Conneaut.” As I understand, he is still a resident of that part of the township of Conneaut which has now become known as the Village of Lakeville, so that there is no question as to his qualifications on that score to continue to exercise his authority as Judge of the Municipal Court.

I note that Section 1579-1181, General Code, being a part of the Conneaut Court Act provides that “the municipal judge shall be subject to the same disabilities and may be removed from office in the same

manner and for the same reasons as the judge of the Court of Common Pleas." Section 1688 provides that if a judge of the court of common pleas removes his residence from his county, he shall be deemed to have resigned and vacated his office. I cannot see that these provisions in any way affect the judge of your municipal court, who has not removed his residence from the territory covered by the Conneaut Municipal Court Act.

Nor can the cases to which you call my attention have any bearing on the situation here under consideration. In *State, ex rel. v. Choate*, 11 Ohio, 511, the judge when elected by Huron County resided therein, but the legislature having detached the portion of the county where he resided and made it a part of Erie County, the court very properly held that he was no longer a resident of Huron County and hence disqualified to hold office in that county because of the provision of the Constitution requiring a judge during his continuation in office to reside in the county in which he had been elected.

The case of *Hartshorn v. Walker*, 17 Ohio, 135 arose upon a similar situation with relation to county commissioners, where the part of the county in which they resided when elected was detached and made to form part of a newly created county and since the statute required them to be residents of the county in which they were elected, the same principle was applied, as indicated by the syllabus which you have quoted in your letter. Both of those cases are based not on an actual removal of residence by the judge, but upon a loss of residence caused by legislative acts changing the boundaries of counties. In the present case, there has been no change of boundary lines of Conneaut Township and no part of it has been made part of another township. So there is no similarity to either of those cases.

As to the jurisdiction of the court, it appears from Section 1579-1183, General Code, that the court was given "jurisdiction of any offenses under any ordinance of the city of Conneaut, Ohio, or any misdemeanor committed within the limits of the city and township of Conneaut," and also civil jurisdiction up to a certain limit within the same territory; also county-wide power to inquire into felonies. By Section 1579-1184, General Code, the court is given county-wide jurisdiction in certain special proceedings. By the terms of other sections all the juris-

diction ordinarily given to justices of the peace is conferred on the court and the office of justice of the peace and constable within the township are abolished.

Applying to this matter the same reasoning herein above stated as to the status of the judge, I am of the opinion that the incorporation of the Village of Lakeville has not in any degree destroyed, modified or affected the jurisdiction conferred by the act in question on the municipal court.

Respectfully,

THOMAS J. HERBERT

Attorney General