

OPINION NO. 70-029

Syllabus:

The city solicitor has a duty to represent the judge and clerk of a municipal court in a suit arising out of acts done in their official capacity.

To: Joseph R. Grunda, Lorain County Pros. Atty., Elyria, Ohio
By: Paul W. Brown, Attorney General, March 18, 1970

I have your request for my opinion as to whether a city solicitor has the duty to defend the judge and clerk of a municipal court in a suit by a private citizen involving acts done by the judge and the clerk in their official capacities.

The duties of a city solicitor are set forth in various statutes throughout the code. Two of the pertinent statutes are Sections 705.11 and 733.53, Revised Code. Section 705.11, supra, provides as follows:

"The solicitor shall act as the legal advisor to and attorney for the municipal corporation, and for all officers of the municipal corporation in matters relating to their official duties. * * *"

Section 733.53, Revised Code, provides in pertinent part as follows:

"The city solicitor, when required to do so by resolution of the legislative authority of the city, shall prosecute or defend on behalf of such city, all complaints, suits, and controversies in which the city is a party, and such other suits, matters, and controversies as he is, by resolution or ordinance, directed to prosecute. * * *"

Under the provisions of these sections, the city solicitor has the following duties: he shall act as legal advisor and attorney for the municipal corporations; he shall act as the legal advisor and attorney for all officers of the municipal corporation in matters relating to their official duties; he shall prosecute or defend on behalf of the city all complaints, suits, and controversies in which the city is a party when required to do so by resolution of the legislative authority; and he shall prosecute such other suits, matters, and controversies as he is by resolution or ordinance directed to prosecute.

You state in your opinion request that the suit in question involves acts done by the judge and the clerk in their official capacities. Under the provisions of Section 705.11, Revised Code, the city solicitor shall act as attorney for all officers of the municipal corporation in matters relating to their official duties. He would, thus, have the duty to defend an officer of the

municipal corporation in a suit arising out of acts done in his official capacity.

The question as to whether or not the judge of a municipal court was a municipal officer was involved in the case of the State ex rel. Thompson v. Wall, 17 N. P. (N.S.), 33. That court held that the judge was a municipal and not a state officer. Chief Justice Weygant cited this case with approval in State ex rel. Stanley v. Bernon, 127 Ohio St. 204 (1933):

"* * * Nevertheless, in 28 Ohio Jurisprudence, 302, appears the statement that 'a judge of a municipal court is a municipal and not a state officer.' Likewise in the case of State, ex rel. Thompson, v. Wall, Dir. of Finance, 17 N.P.(N.S.), 33, 28 O.D.(N.P.), 631, it was held that a judge of a municipal court is a municipal and not a state officer. Of course this is a decision of a nisi prius court, but the cogency of its reasoning and the recognized authorities upon which it relies entitle it to consideration, especially in view of the fact that the judgment was affirmed by the Court of Appeals. * * *"

The same reasoning would apply to the clerk of a municipal court. Both the judge and clerk are officers of the same court. Thus the clerk of a municipal court would also be a municipal officer.

"All that has been said above with respect to the status of a judge of a municipal court as an officer of a municipal corporation in which such court is established is equally applicable to the office of clerk of a municipal court for the reason that both are officers within such court. It is my conclusion, therefore, in particular cases, that the office of clerk of a municipal court established under the provisions of Section 1610, General Code, 1901.31, Revised Code, is, in a limited sense, an office of the municipal corporation the ordinance of which is being applied." (Opinion No. 1132, Opinions of the Attorney General for 1952. See also, Opinion No. 1872, Opinions of the Attorney General for 1952.)

It is therefore my opinion, and you are hereby advised that the city solicitor has a duty to represent the judge and clerk of a municipal court in a suit arising out of acts done in their official capacity.