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1. JUSTICES OF PEACE—JURISDICTION, UPON INSTITUTION OF MUNICIPAL COURT, TERMINATES IN ALL CIVIL AND CRIMINAL CAUSES—TOWNSHIP ENTIRELY WITHIN TERRITORY OF COURT—OFFICE ABOLISHED WITHIN SUCH TOWNSHIPS—NO ELECTIONS FOR SUCH OFFICES SHOULD BE HELD—SECTION 1901.04 RC.
2. SECTION 1909.02 RC CONFERS CERTAIN POWERS UPON JUSTICES OF PEACE—INCIDENTAL TO THEIR JUDICIAL FUNCTIONS—IT DOES NOT OPERATE TO CONTINUE OFFICE IN EXISTENCE IN TOWNSHIPS WHERE JUDICIAL FUNCTIONS ABOLISHED.

SYLLABUS:

In light of Section 1901.04, Revised Code, providing that upon the institution of a municipal court the jurisdiction of justices of the peace in all civil and criminal causes terminates in any township which is entirely within the territory of such court, the office of justice of the peace is abolished within such townships, and no elections for such offices should be held.

2. The fact that Section 1909.02, Revised Code, confers certain powers upon justices of the peace, which powers are incidental to their judicial functions, does not operate to continue the office of justice of the peace in existence in townships where its judicial functions have been abolished.

Columbus, Ohio, August 24, 1955

Hon. Ted W. Brown, Secretary of State
Columbus, Ohio

Dear Sir :

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

“Is the office of Justice of the Peace abolished in a township which is entirely within the territory over which a municipal court has jurisdiction?

“Revised Code Section 1901.04, which, in such instance, terminates the jurisdiction of such Justices in all civil and criminal causes, would seem to have this effect. This seems to be especially so in view of Revised Code Section 1907.01, which reads as follows :

“‘There is hereby established in each township the office of justice of the peace, except in townships in which a court other than a mayor’s court exists, or may be created, having jurisdiction of all cases of which justices of the peace have, or may be given jurisdiction.’

“On the other hand I find nothing that definitely states that the office is abolished. Furthermore, Revised Code Section 1909.02 might be interpreted so as to give Justices of the Peace some authorities which are not taken away by Revised Code Section 1901.04; for example, such things as solemnizing marriages and administering oaths.

“As a result, there is some confusion as to whether or not elections should be held for the office, in such places. Therefore, in order that I might prescribe the ballots for the coming elections, I would appreciate your attention to this question as soon as may be convenient for you.”

I had a similar question for my consideration in my Informal Opinion No. 75 for 1951, involving a constable in a justice court. I there held that the Municipal Court Act had the effect of abolishing the office of such constable when appointed by the justice. In the course of my opinion I stated :

“It appears from your letter that the Office of Secretary of State has advised that in view of such abolishment of the offices of justice of the peace, the offices of constable in Guernsey county necessarily are also abolished.”

I found no reason to except to your decision since under the Supreme Court ruling in *State, ex rel. Buel v. Joyce*, 87 Ohio St., 126, the decision

of the Secretary of State, acting as state supervisor of elections upon written objections to nomination papers or upon other questions arising in the course of nomination of candidates, is final. Further exploring the question, I found your decision to be warranted in law and in accordance with prevailing judicial opinion.

It should be noted that prior to the 1912 amendment of the Constitution, justice courts in Ohio were regarded as constitutional tribunals and they therefore could not be abolished or their jurisdiction terminated by statutory provisions. Since said amendment and as now provided by Section 1, of Article IV of the Constitution, the judicial power of the state is vested in "such other courts inferior to the courts of appeals as may from time to time be established by law."

The Supreme Court construing this provision in *State, ex rel. Ramey, v. Davis*, 119 Ohio St., 596, held that the creation of courts inferior to the court of appeals was within the exclusive power of the legislature, and held that the establishment of municipal courts was a valid exercise of legislative power. It further elaborated upon such power in the earlier case of *Re Hesse*, 93 Ohio St., 230, at page 233, stating:

"* * * it seems to be settled that, Section 1, Article IV, authorizing the establishment of inferior courts, being a special grant of legislative power upon a particular subject, the general assembly is vested with full power to determine what other courts it will establish, local if deemed proper, either for separate counties or districts, and to define their jurisdiction and power. *The State, ex rel., v. Bloch*, 65 Ohio St., 370; *State, ex rel., v. Yeatman*, 89 Ohio St., 44. It is to be observed that the jurisdiction of no constitutional court is invaded by the sections of the municipal court act under consideration. They abridge and limit the jurisdiction of a statutory court only."

It has been stated that one of the purposes of the enactment of the Uniform Municipal Court Act was the elimination of justice of the peace courts and the personal interest of the justices in the fees derived from the causes tried before them. Such system of administration of justice was denounced by Chief Justice Taft in the *Tumey* case, 273 U. S., 510, as constituting a denial of due process. His opinion formed the basis from which the present municipal court system grew and developed, and which prompted municipalities in Ohio to procure enactments for the establishment of such courts within their corporate limits in place of the justice courts. In keeping with this intention, the jurisdiction of justice courts was

terminated by the provisions of the Municipal Court Act. Section 1901.04, Revised Code, provides as follows :

“* * * Upon the institution of a municipal court, the jurisdiction of justices of the peace and police justices in all civil and criminal causes terminates in any township or municipal corporation which is entirely within the territory. Upon the institution of a municipal court, the jurisdiction of justices of the peace in all civil and criminal causes terminates in that part of any township which is included within the territory.

“Upon the institution of a municipal court, all causes, judgments, executions, and proceedings then pending in courts of mayors, police justices, and justices of the peace within the territory as to which their jurisdiction is terminated shall proceed in the municipal court as if originally instituted therein. * * *”

What is meant by the term “jurisdiction of justices of the peace * * * terminates?” Does it merely terminate in civil and criminal causes; or is the office completely abolished in territory entirely within the jurisdiction of a municipal court?

The only reason that has been suggested to me for holding that the office is not completely abolished, is the fact that Section 1909.02, Revised Code, confers upon justices the right to administer oaths, take acknowledgments and solemnize marriages. Those duties, however, are merely concomitants of their judicial duties. By the express wording of Section 1901.14 (A), Revised Code, they are also conferred upon municipal judges. They are merely incidental powers adhering to the judicial office held by the justice, and do not operate to keep the office in existence when its judicial functions have been terminated.

In view of the above, it is therefore my opinion :

1. In light of Section 1901.04, Revised Code, providing that upon the institution of a municipal court the jurisdiction of justices of the peace in all civil and criminal causes terminates in any township which is entirely within the territory of such court, the office of justice of the peace is abolished within such townships, and no elections for such offices should be held.

2. The fact that Section 1909.02, Revised Code, confers certain powers upon justices of the peace, which powers are incidental to their judicial functions, does not operate to continue the office of justice of the

peace in existence in townships where its judicial functions have been abolished.

Respectfully,
C. WILLIAM O'NEILL
Attorney General