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COURTS, COUNTY—JUDGES—§1907.051 RC—ELECTED BY ELECTORS OF COUNTY COURT DISTRICT—ADDITIONAL COMPENSATION, §1907.082 RC MUST BE UNIFORM THROUGHOUT COUNTY COURT DISTRICT—JUDGE MUST BE ELECTOR OF COUNTY COURT DISTRICT.

SYLLABUS:

1. Under the provision of Sections 1907.051 and 1907.052, Revised Code, county court judges are required to be elected by the electors of the entire county court district in which the office of such judge is created and not by the electors of the "area of jurisdiction" designated as provided in Section 1907.071, Revised Code, for particular judges in counties having more than one such judge.

2. There is no requirement in Chapter 1907., Revised Code, that a county court judge be a resident elector of the "area of jurisdiction" which he may be designated to serve as provided in Section 1907.071, Revised Code, but such judge is required

under the provisions of Section 1907.051, Revised Code, to be a qualified elector and resident of the county court district in which he is elected or appointed.

3. Section 1907.082, Revised Code, authorizing certain additional compensation by allowance by the county commissioners to "each" county court judge requires such allowance to be uniform within the county court district concerned.

Columbus, Ohio, July 17, 1957

Hon. John H. Barber, Prosecuting Attorney  
Fulton County, Wauseon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested to seek your formal opinion on several matters pertaining to Amended House Bill No. 914 or County Court Bill and now known as 1907.011 et seq. My questions are specifically as follows:

"1. Section 1907.052 provides "County court judges shall be elected by the electors of the county court district at a special election to be held on November 5, 1957 . . ."

"In counties where there are more than one county court judge and pursuant to Section 1907.071 the Court of Common Pleas shall thereupon divide the County Court district into areas of separate jurisdiction, are the county court judges elected by the electorate county wide or is one judge to be elected by the electorate in each area of separate jurisdiction?"

"2. Section 1907.082 provides for additional compensation for county court judges within the discretion of the Board of County Commissioners. In counties where there are more than one county court judge, is it required that the additional compensation be uniform among the several judges or may it vary from one district to the other?"

Section 1907.051, Revised Code, as enacted in Amended House Bill No. 914, 102nd General Assembly, reads in part:

"\* \* \* Except as provided in section 1907.052 of the Revised Code, judges shall be elected *by the electors of the county court district* at the general election in the even numbered years, beginning with the year 1958, for a term of four years commencing with the first day of January next following the election for such court \* \* \*." (Emphasis added.)

Section 1907.052, Revised Code, also enacted in Amended House Bill No. 914, *supra*, provides in part:

“County court judges shall be elected *by the electors of the county court district* at a special election to be held on November 5, 1957 for a term of one year commencing on January 1, 1958 \* \* \*.”  
(Emphasis added.)

The term “county court district” is defined in effect, in Section 1907.011, Revised Code, also enacted in Amended House Bill No. 914, *supra*, as follows:

“There is hereby created in each county of the state, in which the territorial jurisdiction of a municipal court or municipal courts is not co-extensive with the boundaries of the county, a court to be known as the county court with jurisdiction throughout a county court district consisting of all territory within the county not subject to the territorial jurisdiction of any municipal court.

Section 1907.071, Revised Code, to which you refer, similarly enacted in Amended House Bill No. 914, *supra*, reads as follows:

“In counties having more than one county court judge, the court of common pleas of such county shall divide the county court district into areas of separate jurisdiction and shall designate the area in which each judge shall have jurisdiction to the exclusion of any other judge of such district, except as provided in section 1907.061 and the location where each judge shall hold court. Each such area shall be made up of one or more townships. In assigning areas, the court of common pleas shall make each area as equal in population to others in the district as is possible under existing conditions.

“In counties having only one county court judge, the area of jurisdiction shall consist of the entire county court district.”

All of these sections were enacted under an emergency provision in the bill and became effective on June 17, 1957.

I see nothing in Section 1907.071, Revised Code, which in any way suggests an intent that where an area of jurisdiction is assigned to a particular judge he is to be elected by the electors of that area. Indeed, even if such “suggestion” were to be found in this section, the provisions of Sections 1907.051 and 1907.052, Revised Code, are so wholly free of ambiguity as to leave no basis for interpretation otherwise than according to their plain meaning. Absent any such suggestion, effect must be given

to such plain meaning, and I thus conclude that all county court judges are to be elected by the electors of the whole county court district whether or not such district will be divided into two or more areas of jurisdiction.

It is possible, of course, that you question the propriety of this conclusion by reason of the provisions of Section 10, Article IV, Ohio Constitution. This section reads:

“All judges, other than those provided for in this constitution, shall be elected by the electors of the judicial district for which they may be created, but not for a longer term of office than five years.”

I am unable to see that this provision constitutes any legal impediment to the plan here adopted by the legislature. Referring to Section 1907.041, Revised Code, we note that it provides in part:

“Each county court district shall have county court judges as follows:

(A) Districts not exceeding thirty thousand population, one judge;

(B) Districts exceeding thirty thousand but not exceeding sixty thousand population, two judges; \* \* \*”

The provision here that “each county court district *shall have* county court judges” is a clear indication that it is the county court district for which these offices have been “created” within the meaning of the constitution.

In any event it is beyond the scope of my office to rule on the constitutional validity of statutes and I should refrain from doing so in this instance even if I should hold the view, which I do not, that a serious question of this sort were here present.

As to your second question, although you refer to a variance from one “district” to another, I assume you actually mean to refer to a variance among “areas of jurisdiction.” Referring to Section 1907.082, Revised Code, we may note that this enactment, effective on January 1, 1958, provides:

“In addition to the compensation provided in section 1907.081 of the Revised Code, the board of county commissioners may provide for payment of a fixed annual amount, not to exceed one thousand dollars, to each county court judge.”

Section 1907.081, Revised Code, thus referred to, also effective on January 1, 1958, provides:

“Judges of the county court shall receive as compensation one thousand five hundred dollars per annum plus an additional amount equal to three cents per capita of the population of the county court district as determined by the last federal decennial census. Such additional amount shall not exceed the sum of two thousand five hundred dollars per annum.

“The compensation of judges of the county court shall be paid in semi-monthly installments payable from the treasury of the county in which the court is situated.

“A judge of a county court shall be disqualified from the practice of law only as to matters pending or originating in said county court during his term of office.”

This provision for a uniform formula, based on population, by which the compensation of these officers is fixed was quite evidently adopted largely as a result of the decision against the constitutional validity of Section 1907.47, Revised Code, in *Neff v. Commissioners*, 166 Ohio St., 360. In the per curiam decision in that case the court said, page 362:

“\* \* \* However, justices of the peace are county elective officers, and an act of the General Assembly relating to the fixing of their salaries is a law of a general nature and must operate uniformly throughout the state. *State, ex rel. Guilbert, Aud., v. Yates, Aud.*, 66 Ohio St., 546, 64 N.E., 570.

“The law applicable to this case is expressed, as follows, in paragraphs four and five of the syllabus in the case of *State, ex rel. Godfrey, a Taxpayer, v. O'Brien, Treas.*, 95 Ohio St., 166, 115 N.E., 25:

“4. The General Assembly of Ohio cannot delegate the authority conferred upon it by Section 20 of Article II of the Constitution, to fix the compensation of officers.

“5. The provisions of an act of the General Assembly purporting to confer authority upon the \* \* \* Board of County Commissioners, to fix the salary of county or township officers within certain limits, without providing a uniform rule for determining such compensation in the several counties of the state, are in conflict with Section 26 of Article II of the Constitution of Ohio, and void.”

“Under the statute in its present form, the Board of County Commissioners in each of the 88 counties could adopt a different formula for fixing salaries, which would not be in conformity with Section 26, Article II of the Constitution. This court is of

the opinion that there is a definite lack of direction in Section 1907.47, Revised Code, as to the manner or method of fixing annual salaries for justices of the peace, which renders the section unconstitutional.”

The last paragraph just quoted may well be thought equally applicable to Section 1907.082, *supra*, and it must, therefore, be conceded that in this instance a serious constitutional question is encountered. Here again, however, I must confine myself to noting the presence of the question and for reasons stated above refrain from any attempt to rule on it. I may say in passing, however, that where the commissioners undertake to vary the amount of this added compensation among the several county court judges of the same district, serving in different areas, the seriousness of the constitutional question would seemingly be heightened for such a variance within the county was present in the Neff case, the annual salaries there ranging from \$25.00 to \$3600.00 within the county.

Moreover it is quite doubtful whether the statutory language used could be thought to permit such variation. Section 1907.082, Revised Code, it will be seen, authorizes added compensation to be provided by the commissioners to *each* county court judge. The use of the expression “to *any* judge” would clearly suggest an attempted authorization of the variation in compensation which you suggest, but the use of the expression “to *each* judge,” in my view, quite clearly suggests the intent to establish uniformity in this regard within the district.

I have for consideration also a query from the Hon. Bernard W. Freeman, Prosecuting Attorney of Huron County, in which he questions whether a county court judge must be a resident elector of the area of jurisdiction which has been assigned to him; and it seems appropriate to treat that question herein rather than separately.

In Section 1907.051, Revised Code, it is expressly provided that a county court judge shall be an elector and resident of the “county court district,” and there is no language in this or other sections of the statute which in any way suggest a requirement that such officer be also an elector and resident of the area in which he may be designated to serve. I conclude, therefore, that the statute makes no such requirement.

In specific answer to these queries, therefore, it is my opinion that :

1. Under the provisions of Sections 1907.051 and 1907.052, Revised Code, county court judges are required to be elected by the electors of the

entire county court district in which the office of such judge is created and not by the electors of the "area of jurisdiction" designated as provided in Section 1907.071, Revised Code, for particular judges in counties having more than one such judge.

2. There is no requirement in Chapter 1907., Revised Code, that a county court judge be a resident elector of the "area of jurisdiction" which he may be designated to serve as provided in Section 1907.071, Revised Code, but such judge is required under the provisions of Section 1907.051, Revised Code, to be a qualified elector and resident of the county court district in which he is elected or appointed.

3. Section 1907.082, Revised Code, authorizing certain additional compensation by allowance by the county commissioners to "each" county court judge requires such allowance to be uniform within the county court district concerned.

Respectfully,  
WILLIAM SAXBE  
Attorney General