

I am of the opinion that the foregoing is a fair and truthful summary of the contents and purposes of the proposed amendment. Accordingly, I submit, for uses provided by law, the following certification:

"I, Gilbert Bettman, Attorney General of the State of Ohio, hereby certify that the foregoing is a fair and truthful summary of the contents and purposes of the proposed amendment of Article XV, Section 9 of the Constitution of the State of Ohio.

GILBERT BETTMAN, Attorney General."

Respectfully,

GILBERT BETTMAN,
Attorney General.

3253.

HOUSE BILLS NOS. 91 AND 92—ESTABLISHING MUNICIPAL COURTS IN CERTAIN TERRITORY IN TRUMBULL COUNTY—LENGTH OF TERMS OF JUDGES NOT SET FORTH IN ACTS—TERMS OF JUDGES AND VALIDITY OF SUCH BILLS DISCUSSED.

SYLLABUS:

House Bills Nos. 91 and 92 discussed as to terms of office therein provided.

COLUMBUS, OHIO, May 25, 1931.

HON. HOWARD D. PORTER, *Chairman, Reference Committee, House of Representatives, Columbus, Ohio.*

DEAR SIR:—YOUR letter of recent date is as follows:

"On April 10, 1931, the Eighty-Ninth General Assembly passed House Bill No. 91, entitled 'A bill to provide for the establishment of a municipal court in and for the city of Warren and townships of Howland and Warren in the county of Trumbull, and to repeal existing sections 14721 and 14730, inclusive, of the General Code,' and House Bill No. 92, entitled 'A bill to provide for the establishment of a municipal court in and for the city of Niles, the village of McDonald and the township of Weathersfield in the county of Trumbull.' These bills were subsequently signed by the Governor and filed with the Secretary of State and became law.

Since the enactment of these bills it has been called to the attention of the General Assembly that the bills do not provide specifically for the term of office of the municipal court judge.

The first paragraph of section 19 of both acts provides as follows:

'The municipal judge shall be nominated by petition; such petition shall be signed by at least three hundred electors of the territory of the court. It shall be in the general form and signed, verified and filed in the manner and within the time required by law of nominating petitions of candidates for other judicial offices. He shall be elected by the electors of the territory of the court in the manner provided by law for the elec-

tion of judges. The first election of the municipal judge shall be held at the regular municipal election in the year 1931. The term of office of the municipal judge shall commence on the 1st day of January next after his election and he shall hold office until his successor is elected and qualified.'

Section 21 of the acts reads as follows:

'The vacation of the judge of the municipal court shall not exceed thirty days in any calendar year and shall be at such time or times as will least interfere with the business of the court. The judge shall be subject to the same disabilities and may be removed from office for the same causes as a judge of the court of common pleas and the law regulating the appointment, election, removal and disability of common pleas judges shall apply to the judge of the municipal court in so far as the same may be applicable and except as otherwise herein provided. Any vacancy occurring in the office of the municipal judge other than temporary absence or disability shall be filled by appointment by the governor and such appointee shall serve until a successor is elected and qualified. A vacancy occurring in the office shall be filled by election at the first general municipal election held more than thirty days after the vacancy shall have occurred and the person so elected shall hold the office for the remainder of the unexpired term.

Whenever the incumbent of the office of judge shall be temporarily absent or incapacitated from acting, the governor shall appoint a substitute who shall have all qualifications required of the incumbent of office. Such appointee shall serve until the return of the regular incumbent or until his incapacity ceases, but no such temporary appointment shall be for a longer period than four months. Such appointee shall have the jurisdiction and powers conferred upon the judge of the municipal court and shall be styled "acting judge" of the municipal court and as such sign all processes and records during the time he is serving and perform all other acts pertaining to the office. All courts shall take judicial notice of the selection and powers of such appointee. The person selected as such acting judge shall be paid out of the Niles (Warren) city treasury for his period of service, in the same manner and at the same rate as the municipal judge. The amount so paid shall not be deducted from the compensation of the municipal judge so absent or under disability. The absence or incapacity of the incumbent of office of judge for a period of four consecutive months shall constitute a vacancy in such office.'

Article 17, paragraph 2, of the Constitution of the State of Ohio provides that the judges, other than judges of the Supreme Court, circuit court, common pleas court and probate court shall be such even number of years, not exceeding six years, as may be prescribed by the General Assembly.

Section 1532 of the General Code of Ohio provides that each judge of the court of common pleas shall hold office for six years.

I shall like to have an opinion as to the construction of these acts as to whether or not a judge could be elected under the terms of these acts, and, if so, what would be the length of his term of office."

The first question you present is whether or not in view of the failure of House Bills Nos. 91 and 92 to provide the term of office of the municipal judges established renders these acts void for uncertainty. The courts have been

uniformly reluctant to so construe a statute, if it is possible to effectuate the intention of the legislature by any reasonable or practical construction, no matter how difficult it may be to ascertain the meaning of an act. This principle is well established in Lewis' Sutherland Statutory Construction, Second Edition, Vol. I. p. 140, 141. The text, in support of which numerous authorities are given, is as follows:

"It is inevitable that some statutes should come from the hands of the legislature with imperfections of various sorts. These imperfections may relate to minor matters, such as grammar, punctuation or rhetoric, or they may relate to substantial matters in the form of omissions, ambiguities and contradictions. It is undoubtedly the duty of a court to so construe a statute as to give it a sensible effect and make it of binding force. 'A statute cannot be held void for uncertainty, if any reasonable and practical construction can be given to its language. Mere difficulty in ascertaining its meaning or the fact that it is susceptible of different interpretations will not render it nugatory. Doubts as to its proper construction will not justify us in disregarding it. It is the bounden duty of courts to endeavor by every rule of construction to ascertain the meaning of, and to give full force and effect to, every enactment of the general assembly not obnoxious to constitutional prohibitions.'"

The only language contained in the acts from which any inference may be drawn as to the term of these municipal judges is contained in Sections 19 and 21 of both acts. It is provided that these judges "shall be elected by the electors of the territory of the court in the manner provided by law for the election of judges" and that "the law regulating the * * election * * of common pleas judges shall apply * * in so far as the same may be applicable and except as otherwise herein provided." The question becomes one of whether or not the law regulating the election of common pleas judges is a law providing for the term of office of common pleas judges. If the answer to this question is in the affirmative, then, of course, the acts must be construed to provide that these municipal judges shall be elected for six year terms, since Section 1532, General Code, provides that each judge of the court of common pleas shall hold office for that period of time. The provision that the law regulating the election of common pleas judges shall apply "except as otherwise herein provided" in so far as the question you present is concerned, is the same as if the phrase "except as otherwise herein provided" had been omitted, the acts containing no express provision for the term of office of these judges.

It is my view that this provision that the law regulating the election of common pleas judges should apply to the judges of these municipal courts, would not ordinarily raise any inference that the provisions for the term of office of common pleas judges should also apply, because if a different term had been provided for these municipal judges, the law regulating the election of common pleas judges could still apply. The method of conducting two elections may well be identical although the officers elected at each may be elected for different terms. It follows, therefore, that to construe these acts so as to say that the municipal judges in question shall be elected for a term of six years is, to say the least, somewhat strained. I do not believe, however, that such a construction is thereby necessarily invalid.

The difficulties surrounding a determination of your question are increased because of the fact that it is generally provided with respect to other municipal

judges that their terms of office shall be four years. The acts in question, however, contain no reference to the other municipal court acts heretofore adopted by the General Assembly, but only adopt the statutes relating to judges of courts of common pleas by general reference. Upon the construction to be given a law adopting another law by general reference, Lord Denman, C. J., said in *Reg. v. Badcock*, 6 Q. B. 787 at p. 797:

"It is a sound rule of construction, applicable to modern as well as ancient statutes, perhaps even more so from necessity in consequence of the looseness of expression which now prevails, that 'in construction of general reference in acts of Parliament, such reference must be made as will stand with reason and right.'"

Since the courts are uniformly reluctant to construe an act void for uncertainty, even when it is susceptible of different interpretations, I believe the courts would hold these acts valid. Because of the fact that the only statutes which are adopted by the act, are the statutes with respect to the election of judges of the courts of common pleas, I am inclined to the view that if the acts are to be held valid, the words of reference to the law regulating the election of common pleas judges may be given a sufficiently broad construction to include the provisions with respect to the term of office of common pleas judges.

The same conclusion might be reached by a consideration of Article XVII, Section 2 of the Constitution, to which you refer. It may well be argued that, the legislature not having limited the term of these judges, they are entitled to the maximum term permitted by the Constitution, which is six years.

In a supplemental communication attached to your request for my opinion, which has just been received, you express the desire that the opinion be rendered so that it may be in your hands on May 25. You have, therefore, not afforded the opportunity to make as thorough a search of adjudicated cases touching the question you present which its importance deserves.

In specific answer to your question, I am inclined to the opinion that the courts would construe House Bills Nos 91 and 92 as valid enactments of the 89th General Assembly and that the judges elected thereunder shall hold office for six years. The matter should, however, be clarified by the legislature.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3254.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN FAIRFIELD,
MONTGOMERY AND RICHLAND COUNTIES.

COLUMBUS, OHIO, May 25, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3255.

DELINQUENT TAXES—MAY BE COLLECTED BY COUNTY TREASURER IN MANNER PROVIDED BY SECTIONS 2667 ET SEQ., GENERAL CODE, ALTHOUGH SUCH TAXES NOT DELINQUENT FOR FOUR YEARS—FIRST SYLLABUS OF OPINION REPORTED IN OPINIONS OF ATTORNEY GENERAL FOR 1927, VOL. II, p. 891, UPHELD.