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JUSTICE OF THE PEACE—JURISDICTION—ABOLISHED IN WASHINGTON COUNTY ON 1/1/58—NO STATUTORY PROVISION FOR COMPENSATION FOR JUSTICES OF THE PEACE.

SYLLABUS:

1. The office of justice of the peace in Washington County, and the jurisdiction of such officers will be unaffected by the enactment of Amended House Bill No. 914, 102nd General Assembly, until January 1, 1958, on which date such office will be abolished.

2. There is presently no provision made by statute for compensation for justices of the peace for their services as such.

Columbus, Ohio, July 18, 1957

Hon. Randall Metcalf, Prosecuting Attorney
Washington County, Marietta, Ohio

Dear Sir:

Your request for my opinion reads as follows:

> "I am interested in ascertaining the present status of the Justices of the Peace within our County.
>
> "Primarily, my question is two-fold:
>
> "1. Am I correct in assuming that the Justices of the Peace until January 1, 1958, have the same jurisdiction as they have previously held?
>
> "2. Is the recent legislation which fails to provide for Justices' compensation unconstitutional?"

Your attention is invited to Section 2 of Amended House Bill No. 914, 102nd General Assembly, the so-called "county court bill," which reads as follows:

> "That existing sections 509.05, 1907.01 to 1907.47, inclusive and 1907.99 of the Revised Code are repealed effective January 1, 1958."

In Amended House Bill No. 937, 102nd General Assembly, a companion measure to amend House Bill No. 914, *supra*, numerous sections were

amended so as to substitute "county court" and "county court judge" for "justice of the peace court" or "justice of the peace," *etc.* Section 3 of this act reads as follows:

"That this act shall take effect on January 1, 1958."

I know of no other enactment by the 102nd General Assembly which would affect the jurisdiction of justices of the peace in your county prior to January 1, 1958, and so conclude that such jurisdiction will remain unchanged until that date.

As to your second query, it has long been the practice of this office to decline to rule on the constitutional validity of legislative enactments, the more especially as the power of the Supreme Court itself is limited in this regard. See Section 2, Article IV, Ohio Constitution.

Actually, in the instant case, you inquire not as to the validity of a particular enactment but as to the "constitutionality" of the General Assembly's *omission* to provide a substitute for Section 1907.47, Revised Code, which was declared invalid in Neff v. Commissioners, 166 Ohio St., 360.

It is well settled in Ohio that public officers have no constitutional right to be compensated for their services, such right, where it exists, being established solely by statute. Thus, in Donahey v. State, *ex rel.* Marshall, 101 Ohio St., 473, the court said, pp. 476, 477:

> "It is a familiar rule that when a public officer takes office he undertakes to perform all of its duties, although some of them may be called into activity for the first time by legislation passed after he enters upon his term. As said by Bradbury, J., in *Strawn v. Commissioners of Columbiana County,* 47 Ohio St., 404, at page 408: 'The fact that a duty is imposed upon a public officer will not be enough to charge the public with an obligation to pay for its performance, for the legislature may deem the duties imposed to be fully compensated by the privileges and other emoluments belonging to the office.' That case is commented on with approval by Judge Spear in *Jones, Auditor, v. Commissions of Lucas County,* 57 Ohio St., 189, 209, which is likewise approved in *Clark v. Board of County Commissioners of Lucas County,* 58 Ohio St., 107, 109. To the same effect is *State, ex rel. Enos, v. Stone,* 92 Ohio St., 63.
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> "In *Twiggs v. Wingfield,* 147 Ga., 790, it is said: 'A public officer takes his office cum onere, and so long as he retains it he undertakes to perform its duties for the compensation fixed,

whether such duties be increased or diminished.' See also *State, ex rel. Noble, v. Mitchel,* 220 N. Y., 86; *State, ex rel. Bryant, v. Donahey, Auditor,* 96 Ohio St., 247, and *Board of County Commissioners of Creek County v. Bruce,* 51 Okla., 541, 152 Pac. Rep., 125."

See also 37 Ohio Jurisprudence, 1011 *et seq.,* Section 152.

In your inquiry you state also that in your county certain of the justices are continuing to hear cases and "are continuing to charge their statutory fees therefor." By this I assume that you mean that the justices concerned are continuing to collect these fees as their own personal compensation for their services under the system which was formerly provided for that purpose under Sections 1907.32 and 1907.33, Revised Code, prior to the amendments to these sections which became effective on January 1, 1956, through the enactment of Senate Bill No. 319, 101st General Assembly.

By referring to the Neff case, *supra,* it will be observed that no part of Chapter 1907, Revised Code, was declared invalid, excepting only 1907.47, Revised Code. The question which you present in this regard is, therefore, whether the invalidation of this section is sufficient to destroy the entire 1955 enactment and to include the provision for repeal of Sections 1907.32 and 1903.33, Revised Code.

The test to be applied in a case of this kind is stated in 10 Ohio Jurisprudence 2nd, 265, *et seq.,* Section 186:

> "Dependence of Parts; Test of Separability.—Whether or not the infirmity that avoids a part affects the entire act depends upon the connection and dependence on each other of the various provisions. The significant element is whether they are essentially and inseparably connected in substance. Unless different enactments are inseparably connected one with the other or others, the unconstitutionality of one section of an act does not necessarily invalidate the other sections.
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> "If the provisions of an act are interdependent and interwoven, the entire act must stand or fall together, and where the provisions are dependent upon each other, the invalidity of one provision will vitiate all of the provisions."

It is recognized that one of the principal purposes in the enactment of Senate Bill No. 319, *supra,* was to eliminate the fee system, and by providing a salary to eliminate the interest of these officers in pending

litigation the legal objection to which was pointed out by the Supreme Court of the United States in Tumey v. Ohio, 273 U. S., 510 (1927). With this purpose in mind, it may be conceded that an argument can properly be advanced that the failure of the legislative effort to provide for a salary is such a vital part of the enactment that without such a salary provision the act, as a whole, would probably not have been adopted.

Any ruling to this effect, however, would plainly involve a declaration as to the invalidity to all of the other portions of Senate Bill No. 319, *supra*. The making of such a ruling is, of course, wholly beyond the scope of my office and, indeed, it may be noted that in making such a ruling even the power of the Supreme Court of Ohio is somewhat limited. See Section 2, Article IV, Ohio Constitution. I must, therefore, limit myself to noting that an argument as to the constitutional validity as to the entire enactment can be advanced with some logic; and I conceive it my duty to regard the effect of the Neff decision as being confined to Section 1907.47, Revised Code. It is thus my view that there is no authority under the law for justices to retain as personal compensation, any fees which they collect under the authority of Sections 1907.32 and 1907.33, Revised Code.

I conclude, therefore, in specific answer to your inquiry that:

1. The offices of justice of the peace in Washington County, and the jurisdiction of such officers will be unaffected by the enactment of Amended House Bill No. 914, 102nd General Assembly, until January 1, 1958, on which date such office will be abolished.

2. There is presently no provision made by statute for compensation for justices of the peace for their services as such.

Respectfully,
WILLIAM SAXBE
Attorney General