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1. MUNICIPAL COURT OF EAST LIVERPOOL ESTABLISHED—LEGISLATIVE ENACTMENT—SECTIONS 1579-867 TO 1579-909 G. C.—COURT HAS TERRITORIAL JURISDICTION OVER CITY OF EAST LIVERPOOL AND TOWNSHIP OF LIVERPOOL—CITY AND TOWNSHIP AND TERRITORIAL JURISDICTION OF COURT IN NO WAY AFFECTED BY SUBSEQUENT ACTION OF COUNTY COMMISSIONERS—CREATION, NEW TOWNSHIP, EAST LIVERPOOL, CO-EXTENSIVE WITH CITY OF EAST LIVERPOOL AND REMAINDER OF TOWNSHIP INTO NEW TOWNSHIP, LIVERPOOL TOWNSHIP—SECTIONS 3249, 3250 G. C.
2. STATUS, JUSTICE OF PEACE AND CONSTABLE, TOWNSHIP TRUSTEES, TOWNSHIP CLERK, SECTIONS 1579-907, 3268, 3299 G. C.
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4. PERSON OTHERWISE QUALIFIED, RESIDENT OF CITY OF EAST LIVERPOOL OR OF LIVERPOOL TOWNSHIP, ELIGIBLE FOR NOMINATION, OFFICE, JUDGE OR CLERK OF EAST LIVERPOOL MUNICIPAL COURT—SECTIONS 1579-867 TO 1579-909 G. C.
5. DISPOSITION, MINIMUM SUM, \$200.00 COMPENSATION OF JUDGE—RATABLY PROPORTIONED TO RESPECTIVE TAX DUPLICATES—SECTION 1579-868 G. C.

SYLLABUS :

1. The act of the legislature comprised in Sections 1579-867 to 1579-909, General Code, establishing the Municipal Court of East Liverpool and giving such court territorial jurisdiction over the City of East Liverpool and the Township of Liverpool in which such city was then situated, is in no respect affected nor is the territorial jurisdiction of said court in any way affected by the subsequent action of the county commissioners creating the new township of East Liverpool coextensive with the City of East Liverpool, pursuant to Section 3249, General Code, and erecting the remainder of the township into a new township known as Liverpool Township pursuant to Section 3250, General Code.

2. By the terms of Section 1579-907, General Code, the positions of justice of the peace and constable in the original township of Liverpool and in the two townships into which it has been divided, are abolished, but an election should be held in Liverpool Township in November, 1945, for two township trustees for a term of four years and one township trustee for a term of two years and for a township clerk for a term of four years, pursuant to Sections 3268 and 3299, General Code.

3. Since the City of East Liverpool has become identical with the Township of East Liverpool, no township officers are to be elected therein, the offices of justice of the peace and constable having been superseded by the organization of the East Liverpool Municipal Court as provided in Section 1579-867 et seq.

4. Under the provisions of the East Liverpool Municipal Court Act, Sections 1579-867 to 1579-909, inclusive, General Code, any person otherwise qualified, who is a resident either of the City of East Liverpool or of Liverpool Township is eligible for nomination for the office of judge or clerk of said court.

5. The minimum sum of \$200 provided by Section 1579-868, General Code, to be paid by the original township of Liverpool for the compensation of the Judge of the Municipal Court of East Liverpool is not affected by the division of said original Liverpool Township but is to be borne by the City of East Liverpool and the present Township of Liverpool ratably in proportion to their respective tax duplicates.

Columbus, Ohio, January 22, 1945

Hon. Frank W. Springer, Prosecuting Attorney
Lisbon, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"Liverpool township in Columbiana county formerly included the City of East Liverpool, as well as a number of square miles of land contiguous to the City of East Liverpool. The council of the City of East Liverpool invoked the procedure provided by G. C. 3249 to separate the city from the balance of the township. Thereupon, the householders of the remaining portion of Liverpool township filed petitions under the provisions of G. C. 3250 to have the balance of the township erected into a new township. Honoring both petitions, the commissioners on December 26th, 1944, dissolved the original Liverpool township in Columbiana county and erected two new townships, one known as East Liverpool township, the lines of which are the same as East Liverpool City, and the other, comprising the land of former Liverpool township outside of the City of East Liverpool, known as Liverpool township. Thus, two completely new townships were erected in the place of the former Liverpool township.

The questions are presented by our local Board of Elections and relate to the effect of this dissolution on the Municipal Court of East Liverpool and its jurisdiction. Sections 1579-867 et seq. of the General Code create and govern said Municipal Court. The questions follow:

1. Inasmuch as the original Liverpool township, which was included when the General Assembly created the East Liverpool Judicial District, has been dissolved, does the said East Liverpool Judicial District now embrace the new Liverpool township or does it consist solely of the City of East Liverpool?

3. Shall the Board of Elections provide ballots for the election of Liverpool township trustees, justices of the peace, constables and clerk for full terms and short terms at the November, 1945 election? (This question involves the new township and probably the construction of G. C. Sections 3259 and 3268).

3. Are we correct in the assumption that East Liverpool township does not elect township officers, not even constables, since the East Liverpool Municipal Court presumably has jurisdiction therein? (This is a mixed question, but my personal opinion is that their assumption is correct in both cases).

4. Does the County Commissioners' action in dissolving the former Liverpool township in any way affect the East Liverpool Judicial District; if not, shall we accept nominating petitions for Municipal Court Judge and Municipal Court Clerk, providing the candidates are qualified electors of the city of East Liverpool? (I presume the Election Board desires to know here if they might accept nominating petitions from candidates from the old Liverpool township or if they are confined strictly to citizens of the city).

5. Does the County Commissioners' action reduce the salary of the East Liverpool Municipal Judge from \$4,000.00 to \$3,800.00, since \$200.00 of the salary was contributed by the original Liverpool township?

I seem unable to find precedent to guide me in answering the foregoing questions and, while it appears to me that the County Commissioners' action abolished that portion of the East Liverpool Judicial District which was formerly Liverpool township and does confine it strictly to the City of East Liverpool, the Board of Elections and others involved would appreciate your official opinion in this matter."

1. Considering your questions in their order, I note first the provisions of the act creating the Municipal Court of East Liverpool, contained in Sections 1579-867 to 1579-909, General Code. The territorial jurisdiction of this court is fixed by Section 1579-869, reading in part as follows:

"Said municipal court herein established shall have jurisdiction of any offense under any ordinance of the city of East Liverpool, Ohio, and of any misdemeanor committed within the limits of Columbiana county, Ohio, to hear and determine the same and impose the prescribed penalty; * * * and in felonies committed within Columbiana county, Ohio, such court shall have power to hear the case and discharge, recognize or commit, * * * and in addition thereto said municipal court shall have ordinary civil jurisdiction within the limits of the city of East Liverpool and township of Liverpool in said county of Columbiana and State of Ohio, in the following cases: * * *"

Section 1579-868, General Code, relates to the judge of said court, his term and compensation. The section reads in part as follows:

"Said municipal court shall be presided over by one judge, to be designated herein as a 'municipal judge,' which office is hereby created, and whose term of office shall be for a period of four years, and said judge shall receive such compensation,

payable out of the treasury of Columbiana county, not less than sixteen hundred dollars per annum, payable monthly, as the county commissioners may prescribe, and out of the treasury of Liverpool township, Columbiana county, Ohio, not less than two hundred dollars per annum, payable monthly as the township trustees may prescribe, and such further compensation, not less than eighteen hundred dollars per annum, payable in monthly installments out of the treasury of the city of East Liverpool, Ohio, as the council or legislative authority may prescribe.

Said municipal judge at the time of his election or appointment and during the continuance of his office shall be a qualified elector and a *resident of either the city of East Liverpool or the township of Liverpool*, county of Columbiana, and State of Ohio, * * *".
(Emphasis added.)

By the provisions of Section 1579-870, General Code, the court is given jurisdiction coextensive with the limits of Columbiana County for various purposes, including the power to compel the attendance of witnesses, to issue execution on its own judgments and to enforce the collection of same; and in certain ancillary proceedings.

Section 1579-907, General Code, provides as follows:

"Upon the qualification of the municipal judge, as provided for in Section 2 hereof, the jurisdiction of the mayor of the city of East Liverpool and of all justices of the peace of said Liverpool township, Columbiana county, Ohio, in all civil and criminal matters shall cease, and no justice of the peace or constable shall thereafter be elected in said Liverpool township."

The above quoted portions of the East Liverpool Municipal Court law have, in my opinion a direct bearing on the determination of the question as to the effect, if any, upon the jurisdiction of said court, of the action of the county commissioners in dividing Liverpool township into two townships and do further have a bearing on the question which I shall later consider as to the compensation of the judge.

In my opinion rendered on April 22, 1944, being No. 6848, my predecessor had before him a question quite similar to the one now under consideration, in which the Municipal Court of Conneaut was under consideration. It there appeared that the legislature in language very similar to that relating to the East Liverpool Municipal Court law had created a municipal court in and for the city of Conneaut and the township of

Conneaut in which said city was located. All of the portion of Conneaut township which lay outside of the city of Conneaut having been organized and incorporated as The Village of Lakeville, the question arose as to the effect of that action upon the Municipal Court and it was held in the second branch of the syllabus of the aforesaid opinion, as follows :

“2. By the provisions of Sections 1579-1177 to 1579-1231, General Code, a municipal court was created in and for the city of Conneaut and township of Conneaut in the county of Ashtabula, said city being located within the township of Conneaut. Such court was given jurisdiction of all offenses under any ordinance of said city and of all misdemeanors committed within said city or township ; also civil jurisdiction within said city and township, and county-wide power to inquire into felonies. The offices of justice of the peace and constable were abolished. The subsequent incorporation as a village of the portion of said township not lying within said city did not affect or modify in any respect, the jurisdiction conferred on said court by said act.”

In the course of that opinion, after calling attention to the proposition that the legislature had the exclusive power under the Constitution to establish courts other than those established by the Constitution itself, it was said :

“Independent of the proposition which I have been discussing, I am of the opinion that the incorporation of the village of Lakeville could not have the effect of amending the act of the legislature in establishing the court in question and defining its territorial jurisdiction. The legislature in enacting the Conneaut Municipal Court Act clearly intended to provide a tribunal for the territory which was then occupied by the city of Conneaut and the unincorporated remainder of Conneaut Township. Nothing has occurred to indicate any change of the legislative intent. If it should be claimed that the action of citizens in a portion of Conneaut Township in deciding to incorporate as a village could have the effect of disturbing or changing the jurisdiction of a court established in a definite area by the legislature, we would have the anomalous situation of a virtual repeal of a legislative act by the action of citizens aimed at the accomplishment of a totally different purpose and in no wise authorized by any law to override the legislature.”

The situation presented by your inquiry is not identical with that in the Conneaut matter since there was there no action on the part of the commissioners partitioning or dividing the township. It might be argued

that in the present case the existence of Liverpool Township had been completely destroyed in the erection of two new townships. An examination of the statutes relative to the change of boundaries and the division of townships will, I believe, aid in determining the question before us. Section 3245 et seq., General Code, are involved.

Section 3246 General Code, provides that no township shall be laid off having less than twenty-two square miles, or have its boundaries so changed as to reduce its territory below that quantity, unless it includes a city or village corporation, "except as hereinafter provided." Section 3249, General Code, reads as follows:

"If the limits of a municipal corporation do not comprise the whole of the established township or townships in which it is situated, or if by change of the limits of such corporation, or otherwise, they include territory lying in more than one township, and the council of such corporation shall in either case, by a vote of the majority of the members thereof, petition the commissioners of the proper county for a change of township lines so as to make them identical in whole or in part with the limits of the corporation, or to erect a new township out of the portion of such township or townships included within the limits of such municipal corporation, the commissioners on presentation of such petition, with the proceedings of the council duly authenticated, at a regular or adjourned session, may change the boundaries, of the township or townships, or erect such new township accordingly."

The emphasis, which I have supplied, indicates the precise procedure which appears to have been taken by the City of East Liverpool in the case which you present. The result of the action of the Commissioners was to "erect such new township."

Apparently, this action left the remaining portion of Liverpool Township with less than twenty-two square miles, so that the householders of such reduced township proceeded under Section 3250, General Code, to have their portion of the township set up as a new township. This section reads as follows:

"In making such change, if any township not having within its limits a city or village, is reduced in territory to less than twenty-two square miles, it may be by the commissioners thereupon annexed to any contiguous township or townships, or the commissioners may annex thereto territory from any contiguous

township or townships, and erect a new township, as in their opinion will best promote justice and public convenience. If a majority of the householders of such reduced township outside the limits of such municipal corporation petition therefor, *the commissioners may erect such reduced township into a new township.*"

I have again italicized the words which seem to indicate the course pursued and the result. While the language used in each of these sections speaks of the erection of a "new township", it appears to me that where no territory is added to the original township and none subtracted therefrom but there is merely a division into two townships, there can be no reason to hold that the jurisdiction of the court as prescribed by the legislature, over the territorial area of the original township, has been either destroyed or curtailed. But for the fact that the action of the city in having its area made into a township under Section 3249, General Code, resulted in reducing the remnant of Liverpool Township below twenty-two square miles, there would have been no occasion and no right, so far as I can discover, on the part of the outlying householders to appeal to the county commissioners for the erection of their territory into a separate township and no power in the commissioners so to do, and that territory would have remained Liverpool Township, reduced in size but unchanged as to its identity. It, together with the City of East Liverpool still remains as the territory over which the legislature intended to extend the jurisdiction of the court. If the commissioners should have taken a part of Liverpool Township and annexed it to some other township, or had annexed a portion of some other township to Liverpool, other questions might arise, but nothing that has been done here has disturbed the geographical area over which the court is given jurisdiction by the act under consideration.

Accordingly, it is my opinion that the two orders of the county commissioners made on the 26th day of December, 1944, as stated in your letter, did not have the effect of withdrawing from the East Liverpool Municipal Court its jurisdiction over the territory described in the act creating such court, to wit, the City of East Liverpool and the whole of Liverpool Township as it then existed.

2. My conclusion on the question hereinbefore discussed as to the jurisdiction of the Municipal Court of East Liverpool, is based upon the

proposition that regardless of the division of Liverpool Township into two townships and a change in name of a portion of such township, the *geographical* area of the judicial district created by the legislature remains unchanged. When we come, however, to a consideration of the effect of that division upon the election of township trustees and other township officers in the reduced Liverpool Township a different principle must apply. We are now dealing with the *political* character of the old and new township of Liverpool. As a political entity the original township has been substantially changed, at least so far as concerns its governing officers. The officers who were elected before the division were chosen by the electors of the entire area including the City of East Liverpool. It might easily happen that all of them were residents of East Liverpool which was then a part of Liverpool Township. The new township of Liverpool is now confronted with the obligation to provide for itself officers elected by the electors resident within its own bounds.

Section 3259, General Code, provides as follows:

“When a new township is set off, the county commissioners shall forthwith give at least ten days public notice by advertisement, in three public places in such township, of the time and place of holding an election for township officers. At such time and place the electors of the township shall assemble, and elect officers, who shall hold their offices until the next regular township election and their successors are elected and qualified.”

I am informed that steps have already been taken by the county commissioners under that statute to hold an election in Liverpool Township at which officers will be chosen. It will be observed that officers thus elected are to hold their offices only until the next regular township election and until their successors are elected and qualified. This brings us to a consideration of Section 3268, General Code, which provides for the regular township election and which reads as follows:

“Two trustees shall be elected at the general election in 1937 and quadrennially thereafter, in each township, who shall hold office for a term of four years, commencing on the first day of January next after their election. One trustee shall be elected at the general election in 1937 in each township who shall hold his office for a term of two years, commencing on the first day of January next after his election. One trustee shall be elected at the general election in 1939 and quadrennially thereafter in each

township, who shall hold his office for a term of four years, commencing on the first day of January next after his election.”

It will be noted that two trustees were required to be elected in 1937 and *quadrennially thereafter* who should hold office for a term of four years, and that one should be elected for a term of two years. Since the regular election to be held in November, 1945, will mark the end of the second quadrennium after 1937, it would appear to me to be proper that at that regular election two trustees should be elected for a term of four years and that one trustee should be elected for a term of two years.

Relative to the township clerk, Section 3299, General Code, provides as follows:

“A township clerk shall be elected at the general election in 1937, in each township, who shall hold his office for a term of two years, commencing on the first day of January next after his election. A township clerk shall be elected at the general election in 1939, and quadrennially thereafter in each township, who shall hold his office for a term of four years commencing on the first day of January next after his election.”

Here, it will be noted that a township clerk was to be elected in 1937 for a term of two years and in 1939 for a term of four years and *quadrennially* thereafter. This, taken in connection with the election of the trustees, was obviously intended to bring the election of the clerk in the same year when but one trustee is to be elected. Accordingly, in order to preserve the quadrennial periods established by the statute, it is my opinion that the clerk to be elected in 1945 should be elected for a two year term, and thereafter such clerk should be elected for a four year term.

However, there should be no election in Liverpool Township for justice of the peace or constable, inasmuch as by the terms of the Municipal Court Act above referred to, the offices of justice of the peace and constable were abolished, their places being taken by the Municipal Court and its officers. Inasmuch as the organization and jurisdiction of the Municipal Court are not in any way affected by the division of the original township, it appears to follow that Liverpool Township as altered will have no more occasion to elect justices and constables than it had in its original state.

3. In view of the foregoing conclusions, it requires no elaboration to hold that East Liverpool Township which is coextensive with the City of East Liverpool should not elect any township officers. The provisions of Section 3512, General Code, apply. It is there provided that when the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices and regulating their compensation, clerks and other officers and employes. This section would effectively do away with election of township trustees and clerk in East Liverpool and the provisions of the Municipal Court Act above referred to eliminate any question as to justices and constables.

4. As to nominating petitions for municipal court judge and municipal court clerk, I again call attention to the provisions of the act creating the court. I have already set out Section 1579-868, General Code, which provides that the Municipal Judge at the time of his election or appointment and during the continuance of his office shall be a qualified elector and a "resident of either the City of East Liverpool or the Township of Liverpool." Section 1579-894 relative to the election of the clerk of said court, provides for his election for a term of four years, at a salary of \$1800 but makes no provision or qualification as to his residence. Accordingly, it is my opinion that nominating petitions for municipal court judge and clerk are to be accepted if the candidates nominated are resident either of the City of East Liverpool or what is known as Liverpool Township.

5. Relative to the effect of the change in township boundaries upon the salary of the municipal judge, I again call attention to Section 1579-868, hereinabove quoted, in which it is provided that he shall receive "out of the treasury of Liverpool Township, Columbiana County, Ohio, not less than \$200 per annum." This, together with the minimum of \$1600 payable by Columbiana County and the compensation not less than \$1800 to be paid by the City of East Liverpool, would give the judge a minimum salary of \$3600. I note from your letter that the judge is now receiving \$4,000, but I understand your question to be directed at the \$200 which as you state was contributed by the original Liverpool Township.

The answer to the question thus raised is not without difficulty. I must adhere, however, to the proposition already stated that nothing which

the county commissioners could do or have done can disturb or override the action of the legislature in creating this court and fixing its jurisdiction. I am of the opinion that the same principle must apply to the compensation fixed by the law. Certainly the judge should not suffer a diminution in his salary by reason of the division of the township. Under the condition existing when the Municipal Court Act was passed the contribution of \$200 by the township would necessarily arise from a tax on the property of the original township which included the City of East Liverpool and the outlying territory. Now that these are separated into two political subdivisions it appears to me that it would be only carrying out the intention of the legislature that the portion of the salary to be borne by the original township should now be borne by the two subdivisions in the same ratio by which they would have contributed before, to wit, in proportion to their respective tax duplicates. In other words, in addition to the amount directly imposed upon the municipality it will continue to carry its ratable proportion of the amount payable by the original township, and the new township comprising the remnant of Liverpool Township will bear the remainder.

This conclusion seems to me to be supported by Section 3254, General Code, which provides :

“When a township is altered, diminished, or in any way changed, by the formation of new townships, or additions to other townships, or otherwise, such original township, and all parts or portions thereof, shall remain liable, to the same extent, on contracts, engagements, or liabilities, contracted by such township prior to the change as if no such alteration, diminution, or change had taken place.”

While the obligation raised by this Municipal Court Act is not strictly a matter of contract yet it is clearly a liability imposed upon the territories in question which, in my opinion, could not be changed by action of the county commissioners.

Accordingly, and in specific answer to your several questions it is my opinion :

1. The act of the legislature comprised in Sections 1579-867 to 1579-909, General Code, establishing the Municipal Court of East Liverpool and giving such court territorial jurisdiction over the City of East

Liverpool and the Township of Liverpool in which such city was then situated, is in no respect affected nor is the territorial jurisdiction of said court in any way affected by the subsequent action of the county commissioners creating the new township of East Liverpool coextensive with the City of East Liverpool, pursuant to Section 3249, General Code, and erecting the remainder of the township into a new township known as Liverpool Township pursuant to Section 3250, General Code.

2. By the terms of Section 1579-907, General Code, the positions of justice of the peace and constable in the original township of Liverpool and in the two townships into which it has been divided, are abolished, but an election should be held in Liverpool Township in November, 1945, for two township trustees for a term of four years and one township trustee for a term of two years and for a township clerk for a term of four years, pursuant to Sections 3268 and 3299, General Code.

3. Since the City of East Liverpool has become identical with the Township of East Liverpool, no township officers are to be elected therein, the offices of justice of the peace and constable having been superseded by the organization of the East Liverpool Municipal Court as provided in Section 1579-867 et seq.

4. Under the provisions of the East Liverpool Municipal Court Act, Sections 1579-867 to 1579-909, inclusive, General Code, any person otherwise qualified, who is a resident either of the City of East Liverpool or of Liverpool Township is eligible for nomination for the office of judge or clerk of said court.

5. The minimum sum of \$200 provided by Section 1579-868, General Code, to be paid by the original township of Liverpool for the compensation of the Judge of the Municipal Court of East Liverpool is not affected by the division of said original Liverpool Township but is to be borne by the City of East Liverpool and the present Township of Liverpool ratably in proportion to their respective tax duplicates.

Respectfully,

HUGH S. JENKINS
Attorney General