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CRIMINAL BAILIFF—COMMON PLEAS COURT—2301.12 RC—
APPOINTMENT AND COMPENSATION OF ONLY ONE—NO
AUTHORITY TO APPOINT TWO PERSONS AS SUCH BAIL-
IFFS AND DIVIDE THE COMPENSATION.

SYLLABUS:

Section 2301.12, Revised Code, provides for the compensation and appointment by the common pleas court of only one regular criminal bailiff, and such court is without authority under that section to appoint two such bailiffs and to divide such compensation between them.

Columbus, Ohio, March 6, 1957

Hon. Ralph A. Hill, Prosecuting Attorney
Clermont County, Batavia, Ohio

Dear Sir:

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

“Under Section 2301.12 of the Code a Criminal Court Bailiff may be appointed, which shall be a Deputy Sheriff, etc.

“Under the circumstances of this County, we probably being about eighty thousand, it is necessary that an assistant Criminal Court Bailiff be appointed. In your opinion, would it be possible

under the law to appoint an additional, or assistant Criminal Court Bailiff to assist in the Common Pleas Court, so long as the salary of both officers does not exceed the sum allowed for one Criminal Court Bailiff.”

It should be noted in this connection that the county in question, Clermont County, has only one Common Pleas Judge, and the number of criminal bailiffs such judge may appoint and the salary he may fix for them are governed by the statutory provisions specifically applicable to such appointments. They are not to be confused with the statutory provisions governing the appointment of court constables, or temporary bailiffs appointed under the provisions of Section 2301.17, Revised Code. Each of these positions is created under a different statute and carries separate and distinct duties. The duties of a criminal bailiff under the provisions of Section 2301.15, Revised Code, require him to act for the sheriff in criminal cases; to conduct prisoners to and from the jail or to the penitentiary; to collect from the Treasurer of State all costs in criminal cases and pay same to the sheriff. They differ from the duties conferred upon a court constable by Section 2701.07, Revised Code, which require him to attend to the assignment of cases and discharge such other duties as the court may require, including the calling and impaneling of jurors, except in capital cases.

The pertinent provisions governing the appointment of a criminal bailiff are contained in Section 2301.12, Revised Code, and read as follows:

“The court of Common Pleas may appoint:

A criminal bailiff, who shall be a deputy sheriff and hold his position at the will of such court. He shall receive compensation to be fixed by such court at the time of his appointment, not to exceed the amount allowed court constables in the same court, which shall be paid monthly from the county treasury upon the warrant of the auditor.”

Authority is also conferred upon the Court of Common Pleas to appoint an additional temporary bailiff to execute process in a criminal case, but without provision for compensation for such services. Section 2301.17, Revised Code, provides:

“On the application of the sheriff, in a criminal case, if the court of common pleas is satisfied that the administration of justice requires an additional criminal bailiff to execute process, it may appoint such additional bailiff, whose powers and duties shall cease when such case is determined.”

While no compensation is expressly fixed for the services of a temporary bailiff, the salary of a permanent bailiff appointed under the provisions of Section 2301.12 is made the same as that allowed court constables in the same court. Section 2701.08, Revised Code, G. C. 1693, fixes their salaries as follows:

“Each constable appointed under section 2701.07 of the Revised Code shall receive the compensation fixed by the judge or judges of the court making the appointment, to be paid monthly from the county treasury on the order of the court, as follows:

(A) In counties where four or more judges regularly hold court, not more than five thousand three hundred dollars each year;

(B) In counties where two and not more than three judges hold court at the same time, not more than three thousand three hundred dollars each year;

(C) In counties where only one judge holds court, not more than twenty-five hundred dollars each year.

For counties where two or more judges hold court, such constable when placed by the court in charge of the assignment of cases, or of any duties other than or in addition to preserving order, may be allowed further compensation not to exceed twenty-one hundred dollars per year, as the court by its order entered on the journal determines. In counties where only one judge holds court, the constable, when not attending the court of common pleas, shall upon the order of the judge of such court of common pleas, and without additional compensation, attend the probate court and the court of appeals of said county.”

I fail to see, in the light of these express and unambiguous provisions which limit the appointment to a criminal bailiff at a yearly salary not to exceed twenty-five hundred dollars where only one judge holds court, how the Court of Common Pleas could validly appoint two bailiffs instead of one and split the salary between them. To justify it under the doctrine of implied power would be a substitution of implications over express provisions. The rule that a statute may not be so construed is stated in 37 Ohio Jurisprudence, 555:

“Courts should not extend their powers by far-fetched implications. They should not by implication read into a statute that which is not intended to be there, or make an implication which the language of the statute does not warrant. Implications or inferences may be resorted to sustain a statute, but not to destroy it. They may not be substituted for express provisions.”

Your statement as to population appears to indicate that you may have in mind the appointment of a court constable, *by a probate court*, under the provisions of Section 2701.07, Revised Code, rather than the appointment of an additional criminal bailiff, by the common pleas court, under the provisions of Section 2301.12, Revised Code. If it is proposed that the common pleas court appoint a court constable, in addition to the criminal bailiff, I know of no reason why that should not be done, for the "population provision" in Section 2701.07, Revised Code, applies only to the probate court. It is to be noted, of course, with respect to such an appointment by the probate court, that that provision is related to the "last federal census," i.e., that of 1950; and the present actual or estimated population cannot, under existing law, be considered pertinent to the matter.

Accordingly, in specific answer to your inquiry it is my opinion that Section 2301.12, Revised Code, provides for the compensation and appointment by the common pleas court of only one regular criminal bailiff, and such court is without authority under that section to appoint two such bailiffs and to divide such compensation between them.

Respectfully,

WILLIAM SAXBE

Attorney General