

## OPINION NO. 68-126

**Syllabus:**

1. The amendments contained in Amended Substitute House Joint Resolution No. 42 repeal Title XXI of the Revised Code only to the extent that any provision thereof is inconsistent with the constitutional amendments proposed in said resolution.

2. The amendments contained in Amended Substitute House Joint Resolution No. 42 do not affect Section 2101.11, Revised Code, and the judge of the probate division of the common pleas court is still the clerk of his own court as prescribed in said section.

3. The words "clerks" and "deputies", as used in subsection (C), Section 4, Amended Substitute House Joint Resolution No. 42, refer to persons employed in such capacities in the probate division of the court of common pleas.

4. No provision of any amendment proposed in Amended Substitute House Joint Resolution No. 42 requires the assumption, by the clerk of the court of common pleas, of any duties, functions or responsibilities over the operations of the probate division of the court of common pleas.

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**To: C. Howard Johnson, Franklin County Pros. Atty., Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, August 22, 1968**

You request my opinion on the following questions in light of the fact that the constitutional amendments proposed in Amended Substitute House Joint Resolution No. 42, have been declared effective as of May 7, 1968, in the case of City of Euclid v. Heaton, 15 Ohio St. 2d 65:

"1. Does the amendment repeal Title XXI of the Ohio Revised Code?

"2. Is the Judge of the Probate Division still the clerk of his own court as set out in Section 2101.11 of the Ohio Revised Code?

"3. In Section 4C of the Amendment, does the word 'clerks' or 'deputies' refer to deputy

clerks of the Common Pleas Court or clerks and deputies relating to court personnel other than deputy clerks of the Court of Common Pleas?

"4. What duties, functions or responsibilities, if any, shall the Clerk of the Court of Common Pleas assume over the operations of the Probate Division of the Court of Common Pleas?"

In answer to your first question as to whether the amendments in question repeal Title XXI of the Revised Code, your attention is invited to paragraph (C) of the schedule of the amendments. It reads as follows:

"(C) All laws and rules of court in existence upon the effective date of this amendment shall continue in effect until superseded or changed in the manner authorized by this amendment."

It is often stated by the courts that all laws in force when a new constitution or constitutional amendment takes effect, and which are not inconsistent with such constitution or constitutional amendment, remain in force even without an express provision to that effect. State, ex rel. City of Toledo v. Lynch, Auditor, 88 Ohio St. 71. Therefore, Title XXI of the Revised Code is repealed only to the extent that any provision thereof is inconsistent with the constitutional amendments in question.

The answers to your second, third and fourth questions require reference to the newly effective subsection (C), Section 4, Article IV, of the Constitution, which reads as follows:

"Unless otherwise provided by law, there shall be a probate division of the courts of common pleas, and the judges shall be elected specifically to such probate division and shall be empowered to employ and control the clerks, employees, deputies and referees of such probate division of the common pleas courts."

Section 2101.11, Revised Code, provides in pertinent part as follows:

"Each probate judge shall have the care and custody of the files, papers, books, and records belonging to the probate office. He is authorized to perform the duties of clerk of his own court. He may appoint deputy clerks, stenographers, bailiff, and any other necessary employees, \* \* \*"

There is no provision of Section 2101.11, supra, which is inconsistent with subsection (C), Section 4, Article IV, supra, nor with any other amendment in question. Therefore,

this statutory provision is still in effect, and, in answer to your second question, the judge of the probate division of the common pleas court is still clerk of his own court.

Your third question, in regard to whether the words "clerks" and "deputies" refers to deputy clerks of the common pleas court or to other court personnel may best be answered by reference to the amendment itself. It clearly provides that probate judges " \* \* \* shall be empowered to employ and control the clerks, employees, deputies and referees of such probate division of the common pleas courts." (Emphasis added)

In answer to your fourth question, there is no provision among the amendments proposed in Amended Substitute Joint House Resolution No. 42 which requires the assumption by the clerk of the common pleas court of any duties, functions or responsibilities over the operations of the probate division of the court.

In summary, it is my opinion and you are hereby advised:

1. The amendments contained in Amended Substitute House Joint Resolution No. 42 repeal Title XXI of the Revised Code only to the extent that any provision thereof is inconsistent with the constitutional amendments proposed in said resolution.
2. The amendments contained in Amended Substitute House Joint Resolution No. 42 do not affect Section 2101.11, Revised Code, and the judge of the probate division of the common pleas court is still the clerk of his own court as prescribed in said section.
3. The words "clerks" and "deputies", as used in subsection (C), Section 4, Amended Substitute House Joint Resolution No. 42, refer to persons employed in such capacities in the probate division of the court of common pleas.
4. No provision of any amendment proposed in Amended Substitute House Joint Resolution No. 42 requires the assumption, by the clerk of the court of common pleas, of any duties, functions or responsibilities over the operations of the probate division of the court of common pleas.