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IN A COUNTY COURT DISTRICT HAVING AN EVEN NUMBER OF JUDGES, HALF OF SAID JUDGES SHOULD BE ELECTED FOR A FOUR YEAR TERM AND HALF ELECTED FOR A TWO YEAR TERM—§§1907.051, 1907.042 R.C.

SYLLABUS:

Pursuant to Section 1907.051, Revised Code, in county court districts having an even number of judges, half of said judges should be elected in 1962 for a four year term and half should be elected for a two year term.

Columbus, Ohio, January 26, 1962

Hon. Ted W. Brown, Secretary of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows :

“A number of the boards of elections, of counties wherein more than one County Court Judge is to be elected in 1962, have sought my advice as to how many of such judges are to be elected at that time for four year terms and how many are to be elected for two year terms.

“In this regard I respectfully request your opinion as to the meaning of the third paragraph of Section 1907.051, Revised Code, particularly the first sentence.

“In counties where an odd number of such judges are to be elected, the language presents no problem. That is to say if three judges are to be elected, two are to be elected for four year terms and one for a two year term; if five judges are to be elected three are to be elected for four year terms and two are to be elected for two year terms, and; if seven are to be elected, four are to be elected for four year terms and three are to be elected for two year terms.

“The problem arises where an even number of judges are to be selected. For instance, if four judges are to be elected, the election of two for four year terms and two for two year terms would seem to comply with the statute. At the same time, however, the election of three for four year terms and one for a two year term would also seem to comply with the statute.

“I do not feel that the General Assembly intended that there should be a choice as there apparently is no one designated to effect

the choice. For this reason I wonder if we might look to the next sentence in the cited paragraph as evidencing an intention of the legislature that if an even-number of judges are to be elected in 1962, one-half of them shall be elected for a four year term and one-half of them shall be elected for a two year term."

The number of judges in a county court district varies from district to district. This is because under Section 1907.041, Revised Code, the number of judges in a particular district is dependent upon the population of the district as shown by the last federal decennial census. Under the formula, there can be districts having one, two, three, four, five, eight, or twelve judges. Also, a district might have one or more judges added under the provisions of Section 1907.042, Revised Code, reading:

"In county court districts hearing cases involving motor vehicle violations which occur on the Ohio turnpike, the court of common pleas, with the consent of the board of county commissioners, may provide for the election of one judge for each twenty thousand population in addition to those provided in section 1907.041 of the Revised Code. Such additional judges shall be subject to the provisions of sections 1907.011 to 1907.991 of the Revised Code."

Judges in the various districts then existing were elected in 1958 for four year terms, Section 1907.051, Revised Code, as existing at that time, having provided for such election (See 127 Ohio Laws, 981). Effective November 6, 1959, said Section 1907.051 was amended to read in pertinent part as follows:

"A county court judge during his term of office shall be a qualified elector and a resident of the county court district to which he is elected or appointed. * * *

"Judges shall be elected by the electors of the county court district at the general election in the even numbered years, for a term of four years commencing with the first day of January next following the election for such court.

"At the general election which occurs in 1962 in districts having two or more judges, not less than one-half of the number of such judges shall be elected for a term of four years and not less than one-half of the number of such judges minus one shall be elected for a term of two years. Thereafter approximately one-half of the number of judges in each such district shall be elected for a term of four years at the general election in each even numbered year.

"* * *

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Thus, although there is a general provision that judges shall be elected for four year terms, there is a special provision as to the 1962 election providing that certain judges will be elected for a two year term at that election.

As you state, in districts having an odd number of judges there appears to be no problem as to how many judges shall be elected for two year terms in 1962. For example, in a three judge district, not less than one-half (two) will be elected for a term of four years, and not less than one-half (two) minus one (one) will be elected for a term of two years; and in a five judge district, not less than one-half (three) will be elected for a term of four years, and not less than one-half (three) minus one (two) will be elected for a term of two years.

As noted in your letter of request, the formula for districts having an even number of judges is subject to two interpretations. For example, in a four judge county two could be elected for a four year term and two could be elected for a two year term, or three could be elected for a four year term and one could be elected for a two year term. The statute is not specific as to which of these methods should be followed.

Since there is some doubt as to the proper procedure to follow in the 1962 election, the intent of the legislature in enacting the provisions in question should be determinative of the question. In this regard, it is stated in 50 Ohio Jurisprudence 2d, Section 247, beginning at page 230:

“In accordance with the presumption that legislative enactments have an object or purpose, the court in construing a statute may properly look to the objects and purposes sought to be accomplished. It has been said that the purpose sought to be accomplished by the enactment of a statute is one of the pole stars of statutory construction, and that statutes are to be given a fair and reasonable construction in conformity to their general object in order to effectuate such object and purpose, and should not be given such an interpretation as would thwart that purpose. If the words and language are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. Accordingly, it is not surprising to find the courts frequently referring to the legislature’s purpose, plan, aim, end, or motive.”

The evident intent of the legislature in providing for election of some judges for two year terms in 1962 was to stagger the terms of judges so that all judges in a district would not be required to run for election at

the same time. This makes the procedure for election of county court judges similar to the procedure in other courts.

In providing such procedure, I am of the opinion that the intent was to, as far as possible, have the same number of judges up for election every two years. Since in districts having an odd number of judges it would not be possible to have an equal number at each election, it was necessary to specify a formula to follow in such districts.

I believe that the words of Section 1907.051, *supra*, as to elections held after 1962, indicate the intent of the legislature as to the question at hand. The pertinent language reads:

“* * * Thereafter approximately one-half of the number of judges in each such district shall be elected for a term of four years at the general election in each even numbered year.

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This provision clearly shows the intent to, as far as possible, equally divide the judges in the district as to year of election, and it is meant to follow the system initiated at the 1962 election.

An equal division in a district having an even number of judges is, of course, quite simple; in 1962, half of the judges will be elected for four year terms and half will be elected for two year terms.

Accordingly, in specific answer to your question, it is my opinion and you are advised that pursuant to Section 1907.051, Revised Code, in county court districts having an even number of judges, half of said judges should be elected in 1962 for a four year term and half should be elected for a two year term.

Respectfully,
 MARK McELROY
 Attorney General