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JUSTICE OF PEACE—COMPENSATION—TWO PERCENT OF AMOUNTS PAID BY DEBTOR TO TRUSTEE APPOINTED BY SUCH JUSTICE—SPECIAL PROVISION—SECTION 2329.70 R. C. NOT REPEALED BY S. B. 319, 101st GENERAL ASSEMBLY.

SYLLABUS:

The special provision in Section 2329.70, Revised Code, for compensation of a justice of the peace by the allowance to that officer of two per cent of all amounts paid by a debtor to a trustee appointed by such justice is not repealed by any of the general provisions in Senate Bill No. 319, 101st General Assembly, relative to the compensation of justices of the peace.

Columbus, Ohio, November 26, 1956

Hon. Bernard T. McCann, Prosecuting Attorney  
Jefferson County, Steubenville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I am referring herewith, a request for an opinion which I received from the Board of County Commissioners of Jefferson County asking whether it is possible to fix a new salary for the Justices of the Peace once it has been fixed.

"The Jefferson County Board of County Commissioners, in determining the annual salary as provided in Section R. C. 1907.47 took into consideration the costs or fees turned into the General Fund by the various squires. As some of them had not made any report to the County Auditor it was assumed that they were inactive and a salary of Fifty Dollars (\$50.00) per year was fixed for that group.

"Mr. CRH, a qualified Justice of the Peace for W Township, was confined in the hospital at the time the letters were mailed requesting the various Justices of the Peace to turn in a report and so no report was received from Mr. H and no fee had been turned into the County Auditor it was decided that he was inactive and his salary was fixed at Fifty Dollars (\$50.00) for the year 1956. Mr. H is now out of the hospital and has turned in a report of fees which would make him active.

"I have reviewed your Opinion No. 4210, dated August 11, 1954, dealing with a similar situation, which opinion held that a

Board of Elections has authority to increase the salary of a clerk or deputy clerk or assistant clerk, which has been fixed under authority of Section 3501.14, Revised Code, at any time during the term for which he has been appointed. However, in the instant case we are dealing with a Justice of the Peace and their duties may classify them as officers within the meaning of Article 2, Section 20 of the Constitution of Ohio.

"I also wish to request an opinion from you as to whether or not the Justices of the Peace shall transmit to the General Fund the fees collected in handling trusteeship cases. Section R. C. 1907.33 enumerates the fees in civil proceedings but I do not find trusteeships listed in this section."

Your question regarding a possible change in the salary of a justice of the peace during his existing term was the subject of a ruling in my Opinion No. 5805, Opinions of the Attorney General for 1955, the syllabus in which reads in part as follows :

"3. A salary may properly be fixed for a public officer during his existing term in a case where no salary has theretofore been provided for the office concerned ; but after such salary is thus fixed no change therein, under existing constitutional limitations, may affect the salary of any officer during his existing term unless the office is abolished."

By referring to Opinion No. 4210, Opinions of the Attorney General for 1954, p. 448, you will observe that that ruling was based on the conclusion that the individual there concerned was not an officer within the meaning of Section 20, Article II, Ohio Constitution. In Opinion No. 5805, supra, a contrary conclusion was reached as to the office of justice of the peace, and in view of the judicial nature of that office I perceive no basis upon which an argument could be made that a justice is a mere employee. For this reason I am impelled to the notion that a review of that opinion, in this regard, is not presently warranted.

In the enactment of Senate Bill No. 319, 101st General Assembly, numerous and substantial changes were made in the office of justice of the peace, one of the most significant of which was the provision of a salary in lieu of compensation by the fee system. Thus, Section 1907.33, Revised Code, lists some thirty-five items of service with respect to which a justice is required to tax a designated fee as costs in civil cases and collect from the judgment debtor. The final paragraph in this section then provides :

“The justices of the peace shall not retain any of the costs or fees specified in this section but shall transmit such costs and fees to the general fund of the county in which the action or proceeding arose on the first business day of each month.”

The “salary provision,” referred to above, is set out in Section 1907.47, Revised Code, as follows :

“The justices of the peace shall receive a fixed annual salary and such salary shall be determined by the board of county commissioners of the county in which such office of the justice of the peace is situated, and may include a fixed annual allowance for supplies, forms, and equipment.”

Unchanged in this revision of the statutes relating to the office of justice of the peace was Section 2329.70, Revised Code, which reads in part :

“Any person upon whom a demand has been made in accordance with section 1911.40 of the Revised Code may apply to any justice of the peace or judge of a municipal court within this state, in whose jurisdiction he resides, for the appointment of a trustee to receive that portion of the personal earnings of the debtor not exempt from execution, attachment, or proceedings in aid for execution, and such additional sums as the debtor voluntarily pays or assigns to said trustee. \* \* \*

“ \* \* \*

“If application for a trustee is made to a judge in a municipal court, such judge shall designate the clerk of such municipal court to act as trustee and said clerk shall serve without additional compensation and his official bond shall be construed as conditioned upon the fulfillment of the trust, and no additional bond shall be required. If application for a trustee is made to a justice of the peace, such justice may receive as full compensation for his services as justice of the peace therein, two per cent of the total amount of the debtor’s payment on claims as provided in this section, and may appoint any suitable person to act as trustee. Such trustee shall give bond as the justice shall fix, conditioned upon the fulfillment of the trust, to be paid for by the debtor applicant, and said trustee shall receive as full compensation for his services as such trustee, two per cent of the total amount of the debtor’s payment on claims as provided in this section, all said compensation to be paid before distribution to creditors.

“ \* \* \*

It is a well established rule of statutory construction that repeals by implication are not favored, and that they will be recognized only in

cases where the two statutes are in such irreconcilable conflict that it is impossible to give effect to both. 37 Ohio Jurisprudence, 397, 398, Section 136. Moreover, there is a presumption against repeal by implication of a special statute by a later general enactment. 37 Ohio Jurisprudence, 408, Section 149.

In the instant case Section 2329.70, Revised Code is clearly a special provision and Sections 1907.33 and 1907.47, Revised Code, are just as clearly general provisions. It is clear also that there is no such conflict between these provisions that would make it impossible to give effect to both.

I conclude, therefore, in specific answer to your inquiry, that the special provision in Section 2329.70, Revised Code, for compensation of a justice of the peace by the allowance to that officer of two per cent of all amounts paid by a debtor to a trustee appointed by such justice is not repealed by any of the general provisions in Senate Bill No. 319, 101st General Assembly, relative to the compensation of justices of the peace.

Respectfully,

C. WILLIAM O'NEILL  
Attorney General