

## OPINION 65-21

**Syllabus:**

A mayor's court created by Section 1905.01, Revised Code, is not a court of record within the meaning of Section 4705.01, Revised Code.

**To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio**  
**By: William B. Saxbe, Attorney General, February 10, 1965**

Your request for my opinion asks whether a mayor's court, under present law, is a court of record, and if so, whether a mayor who is also an attorney is precluded from engaging in law practice during his term of office as provided by Section 4705.01, Revised Code.

The distinction between a court of record and a court not of record was recognized at the common law and has been made in a number of cases both in this country and England. Unfortunately, the cases lack uniformity both as to the distinction and its application.

A court of record is generally defined as one whose proceedings are made a matter of record. Adair's Adm'r. v. Roger's Adm'r. Wright, 428, 429 (Ohio), Wheaton v. Fellows, 23 Wend. 375 (N.Y.); Chrisman v. Metropolitan Life Insurance Co., 178 Tenn. 321, 157 S.W. (2d) 831. It has also been stated that a court of record is a court which has a seal (State v. Allen, 117 Ohio St. 470, 478 (1927)) and which has authority to fine and imprison for contempt (Heininger v. Davis, 96 Ohio St. 205, 210 (1917)). A court classified as an inferior court or a court of limited jurisdiction may nevertheless be a court of record. See Rhinehart v. Lance, 43 N.J.L. 311, 314.

In Heininger v. Davis, id., it was concluded as shown by the first paragraph of the syllabus:

"1. The constitution of the state vests in the courts of appeals jurisdiction to review, affirm, modify or reverse the judgment of a mayor of a municipal corporation, in the exercise of the judicial power conferred upon mayors of municipalities by Section 6152, General Code of Ohio."

The basis for the decision was the further conclusion that the mayor's court is a court of record.

In State v. Allen, supra, decided ten years after the Heininger case, it was held that a justice of the peace is not a court of record. It was stated in the opinion of the court by Marshall, C. J.:

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"This conclusion necessarily results in inferentially overruling the case of Heininger v. Davis,

Mayor, 96 Ohio St., 205, 117 N.E. 229, because the jurisdiction of a mayor is defined to be that of a justice of the peace, and in all essential respects similar provisions are made for conducting judicial proceedings before a mayor. If a justice of the peace is not a court of record within the purview of Section 6 of Article IV, error could not be prosecuted directly to the Court of Appeals, and the Court of Appeals therefore acquired no jurisdiction to hear and determine these error proceedings.

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(117 Ohio St. at 480.)

The conclusion of the court was based largely on the facts that a justice of the peace had no clerk or seal, no regular terms or sessions, and kept no journal or record other than a docket; and upon the further fact that a justice of the peace was not designated by statute as a court of record.

In Pettiford v. Village of Yellow Springs, 38 Ohio App. 310 (1930), the court relying on State v. Allen, supra, held that the mayor's court of the village of Yellow Springs, Ohio, is not a court of record. It was also concluded in Opinion No. 1208, Opinions of the Attorney General for 1960, that a mayor's court of a village is not a court of record.

Mayors' courts are created by Section 1905.01, Revised Code, which provides:

"In all municipal corporations not having a police court and not being the site of a municipal court, the mayor of such municipal corporation has jurisdiction to hear and determine any prosecution for the violation of an ordinance of the municipal corporation, and has jurisdiction in all criminal causes involving moving traffic violations occurring on state highways located within the boundaries of the municipal corporation, subject to the limitations of sections 2937.08 and 2938.04 of the Revised Code.

"In keeping his docket and files, the mayor shall be governed by the laws pertaining to county courts."

Under existing law a mayor's court has a seal (Section 1905.20, Revised Code) and has the power to punish for contempt (Section 1905.28, Revised Code). However, there is no clerk of court and no requirement that there be complete records of proceedings. And more importantly and unlike municipal courts (Section 1901.02, Revised Code), and county courts (Section 1907.012, Revised Code), the legislature has not declared that a mayor's court is a court of record.

The question is one of legislative intent and from an examination of comparative statutes creating and defining county courts and municipal courts, I am persuaded that, in Ohio at least, the General Assembly intended all inferior courts i.e. courts created by legislation and not by Section 1, Article IV of the Constitution,

to be courts not of record unless it has specifically provided to the contrary.

In specific answer to your question, therefore, I am of the opinion that a mayor's court created by Section 1905.01, Revised Code, is not a court of record within the meaning of Section 4705.01, Revised Code.