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1. JUSTICES OF PEACE—ENTITLED TO SALARY, PERIOD SEPTEMBER 30, 1955 TO JANUARY 1, 1956—AMOUNT FIXED BY COUNTY COMMISSIONERS—SECTION 1907.47 RC.
2. SEVERAL JUSTICES OF PEACE CONCERNED—SALARY, ALLOWANCE FOR SUPPLIES—WITHIN DISCRETION OF COUNTY COMMISSIONERS—NEED NOT BE UNIFORM—SECTION 1907.47 RC.
3. SALARY—MAY BE FIXED FOR PUBLIC OFFICER DURING EXISTING TERM WHERE NO SALARY THERETOFORE PROVIDED—ONCE FIXED, NO CHANGE MAY BE MADE—CONSTITUTIONAL LIMITATIONS—OFFICE ABOLISHED.
4. COMMISSION ON JUSTICE COURTS—WITHOUT ANY AUTHORITY TO ACT PRIOR TO JANUARY 1, 1956—AM SB 319, 101 GA—EXCEPTION, SECTION 1907.47 RC.
5. ANY EXISTING OFFICE, JUSTICE OF PEACE, NOT ABOLISHED—ELECTIONS—JANUARY 1, 1956, ELECTION PROCEDURE CHANGED AS PROVIDED BY SECTIONS 1907.02, 1907.03 RC.
6. NO CHANGE IN STATUTES RELATING TO COMPENSATION OF CONSTABLES—AM SB 319, 101 GA.

SYLLABUS:

1. Justices of the peace, under the provisions of Section 1907.47, Revised Code, are entitled to a salary during the period September 30, 1955, to January 1, 1956, in such amount as may be fixed by the county commissioners.

2. Neither the salary nor the allowance for supplies, etc., fixed by the board of county commissioners as provided in Section 1907.47, Revised Code, need be a uniform amount for the several justices of the peace concerned. The statute providing no criterion for the fixing of variable amounts as salary, including an allowance for supplies, etc, for such justices the board may exercise their discretion in the matter by any reasonable rule of classification.

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 be abolished.

4. Except Section 1907.47, Revised Code, Amended Senate Bill No. 319, 101st General Assembly, becomes effective on January 1, 1956; and the commission on justice courts created by the provisions of such act is without any authority to act prior to such date.

5. Amended Senate Bill No. 319, 101st General Assembly, does not abolish any existing office of justice of the peace, and elections for such office in the current calendar year will be conducted as provided in pertinent existing statutes. Such election procedure, after January 1, 1956, the effective date of such act, will be changed only to the extent provided in Sections 1907.02 and 1907.03, Revised Code, as therein amended.

6. Amended Senate Bill No. 319, 101st General Assembly, makes no change in the statutes relating to the compensation of constables.

Columbus, Ohio, September 29, 1955

Hon. Gibson L. Fenton, Prosecuting Attorney
Williams County, Bryan, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The undersigned would appreciate your clarifying the situation of the new law affecting justices of the peace. It is my understanding that the salary does not become effective until January 1, 1956, but that the Commissioners may set the salary on October 1, 1955."

Sections 2 and 3 of Amended Senate Bill No. 319, 101st General Assembly, provide:

"Section 2. That existing sections 1907.01, 1907.02, 1907.03, 1907.04, 1907.05, 1907.06, 1907.07, 1907.08, 1907.09, 1907.10, 1907.11, 1907.12, 1907.15, 1907.18, 1907.32, 1907.33, 1907.34, 1909.01, 1909.02, 1909.03, 1911.03, 1911.04, 1911.07, and 1911.08 of the Revised Code are hereby repealed.

"Section 3. Sections 1907.02, 1907.03, 1907.04, 1907.05, 1907.06, 1907.08, 1907.09, 1907.10, 1907.11, 1907.32, 1907.33, 1907.34 and Sections 1907.01 and Section 2 of this act shall take effect January 1, 1956. Section 1907.47 shall take effect at the earliest time provided for under the constitution."

This act was approved by the Governor on July 1, 1955, and filed in the office of the Secretary of State on the same date. Accordingly, by reason of the provision in Section 3 of this act, and by the operation of

Section 1c, Article II, Ohio Constitution, Section 1907.47, Revised Code, will become effective on September 30, 1955. This section provides:

“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.”

It is assumed that your doubt in this matter stems from the circumstance that existing Sections 1907.32, 1907.33, and 1907.34, Revised Code, are repealed effective January 1, 1956, the date when amendments thereof become effective, which sections as then amended will forbid the retention by justices of the peace of the fees collected by them in both civil and criminal cases, and for certain miscellaneous services.

I do not consider that the failure of the legislature to provide for these statutory changes to become effective simultaneously can be deemed to affect the matter. There is no ambiguity whatever either in that portion of Section 3 of the act providing for the effective date of Section 1907.47, *supra*, or in the provisions in that section that the officers concerned “shall receive a fixed annual salary.” In this situation it becomes necessary to observe the rule stated in *Slingluff v. Weaver*, 66 Ohio St., 621, as follows:

“2. But the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly, and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.”

Applying this rule in the case at hand, I conclude that justices of the peace, under the provisions of Section 1907.47, Revised Code, are entitled to a salary during the period September 30, 1955, to January 1, 1956, in such amount as may be fixed by the county commissioners.

In reaching this conclusion I am not unmindful of the existence of a serious question as to the constitutional validity of the provision here involved. It is beyond the scope of my office, of course, to declare a legislative enactment invalid under the constitution, but I deem it proper to

note the possible points of conflict of this legislation with the Ohio Constitution, and to discuss them briefly.

In Opinion No. 3134, Opinions of the Attorney General for 1940, p. 1071, 1073, the writer held that a justice of the peace is an officer within the meaning of Article II, Section 20, Ohio Constitution, which provides:

“The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

If a justice is an “officer” within the meaning of this provision, it becomes necessary to recognize the question of the constitutional validity of this enactment in view of the decision in *State ex rel. Godfrey v. O'Brien*, 95 Ohio St., 166, 1917. The syllabus in that case is in part as follows:

“* * * The general assembly of Ohio cannot delegate the authority conferred upon it by Section 20 of Article II of the Constitution to fix the compensation of officers.

“5. The provisions of an act of the general assembly purporting to confer authority upon the county auditor, or the board of county commissioners, to fix the salary of county or township officers within certain limits, without providing a uniform rule for determining such compensation in the several counties of the state, are in conflict with Section 26 of Article II of the Constitution of Ohio and void.” * * *

In this case the court was concerned with an act which provided for the appointment of a county board of revision, and certain local assessors of real property for taxation; and the act provided that the salary of the members of such board be fixed by the county commissioners, and that of the assessors by the county auditor subject to the approval of the commissioners. Of these provisions Judge Donahue said, pp. 174, 175:

“This is an attempt to delegate to the auditor and board of county commissioners the legislative authority conferred upon the general assembly by Section 20 of Article II of the Ohio Constitution, to fix the compensation of all officers. These sections are in direct conflict with that constitutional provision and void. *State, ex rel. Montgomery, v. Rogers*, 71 Ohio St., 203, 219, *State, ex rel. Guilbert, v. Yates*, 66 Ohio St., 546, 551, and *Cricket et al. v. State*, 18 Ohio St., 9.”

It should be observed, however, that the Supreme Court has not applied this rule in the case of municipal judges. In *State ex rel. Dempsey v. Zangerle*, 114 Ohio St., 435, the per curiam opinion is as follows:

“This is an action instituted under the original jurisdiction of this court, praying a writ of mandamus to require the auditor of Cuyahoga county to issue a warrant on the treasurer of Cuyahoga county in the sum of \$250; that amount being relator’s compensation from the county of Cuyahoga for the month of January, 1926, due him as chief justice of the municipal court of Cleveland, it being alleged that the commissioners of said county had made due appropriation therefor. General Code, Section 1579-3, makes provision for payment out of the treasury of Cuyahoga county of a portion of the salaries of the judges of the municipal court of the city of Cleveland. The answer filed by the auditor raises the question of the constitutionality of the law. On consideration of the issue involved, it is the unanimous judgment of this court that the writ of mandamus must be allowed, upon the authority of *State, ex rel. Mathews, v. Andrews*, 97 Ohio St., 333, 120 N.E., 879, and *Commissioners of Butler County v. State ex rel. Primmer*, 93 Ohio St., 42, 112 N.E. 145.”

Section 1579-3, General Code, mentioned in this decision, provided for the fixing of the compensation of judges of the Cleveland Municipal Court, subject to prescribed minima, in part by the county commissioners, and in part by city council, a provision quite comparable to that found in Section 1907.47, *supra*, except that in the latter case no minimum is prescribed. This decision was mentioned in *State ex rel. Holmes v. Thatcher*, 116 Ohio St., 113, in considering quite similar provisions in former Section 1558-48, General Code, relative to the compensation of judges of the Columbus Municipal Court. In the per curiam opinion in this case the court said, p. 115:

“This court has heretofore, in the case of *State, ex rel. Dempsey, v. Zangerle*, Aud., 114 Ohio St., 435, 151 N.E., 194, in effect declared a similar statute to be valid. But neither that case nor any other case decided by this court has ever approved any statute, or any other legislative authority or quasi legislative authority, to increase the salary of any officer during an existing term of office. The action of the board of commissioners and of the city council, in so far as it applies to judges of the municipal court of the city of Columbus who were in office at the time of the enactment of such provisions and the making of such appropriations, is in violation of the provisions of section 20 of Article II of the Constitution of Ohio, which provides:

“The General Assembly, in cases not provided for in this Constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.”

It will be noted that the question of the possible invalidity of the act, as a delegation of the legislative power to “fix * * * the compensation of all officers” under Article II, Section 20, *supra*, was raised but not discussed in the Dempsey case. In this connection the court has recently pointed out that “a reported decision, although in a case where the question might have been raised, is entitled to no consideration as settling, by judicial determination, a question not passed upon or raised at the time of the adjudication.” See *State, ex rel. Gordon v. Rhodes*, 158 Ohio St., 129. Nevertheless the Dempsey case does represent an instance in which the court applied a statute which was claimed to have amounted to a legislative delegation of this power, although the O’Brien case, *supra*, was neither considered nor distinguished therein.

As I have indicated above, it is wholly beyond the province of my office to declare a legislative act invalid under the constitution, especially in what appears to be an unsettled state of the law. It must be assumed, therefore, that the provisions in Section 1907.47, Revised Code, will be applied by the courts as were the essentially similar provisions in the municipal court cases above cited, particularly as we are here concerned also with local statutory courts.

Moreover, and more specifically, we may assume that the courts will apply the rule in the Holmes case, *supra*, to inhibit a change during the existing term of a justice, in the salary thus fixed by the county commissioners. This probability should be taken into consideration, therefore, in making the initial determination of such salary. From a practical point of view, because during the final months of 1955 justices will receive both salary and fees, certain boards of county commissioners may be impelled to fix the salary at a nominal amount during such period, with the intention of increasing such amount as of January 1, 1956, after which date the fees collected by these officers will be paid into the county treasury. Under the rule in the Holmes case, it would appear that such increase could not apply during an incumbent’s existing term.

In passing it may be observed that no objection could be raised to the initial fixing of a salary during an existing term in a case where no

salary had theretofore been provided for the office concerned. See State ex rel. Taylor v. Carlisle, 3 N.P. (N.S.), 544, and cases therein cited.

I have concurrently for consideration certain other questions relating to the interpretation of Amended Senate Bill No. 319, supra, and for the purpose of convenience I am including them herein. The first of these is the query of the Hon. James K. Leedy, Prosecuting Attorney for Wayne County, whose communication is as follows:

“The county commissioners of Wayne County have asked me whether R. C. 1907.47 (newly enacted by Amended Senate Bill No. 319) should be interpreted to mean that the salary of all Justices of the Peace in any one county is to be the same as the other J.P.s in that county. The Wayne county commissioners would like to fix the salary of each J.P. more or less in accordance with the amount of time the office takes.

“If the use of the singular of the word ‘salary’ in R.C. 1907.47 implies that the salary shall be uniform throughout the county, then I presume that the allowance for supplies, etc., should also be uniform throughout the county.”

The inquiry of the Hon. Richard H. Finefrock, Prosecuting Attorney for Logan County, is as follows:

“The Justice of Peace Commission of this county is attempting to organize, but they have referred several questions to this office; they want an informal opinion at this time so that they can complete the organization. Their questions are as follows:

“(1) Several Justices are now running for office, and the question has arisen as to what happens to their candidacy?

“(2) Does the Commission have the right to set up the districts and then appoint a Justice at this time because a vacancy exists?

“(3) Is there any magic about any particular time for the election? I think they assume that November 1956 would be the proper time for the first election.

“(4) How are constables to be paid under the revised act?”

It will be observed that the statute provides that the “justices” shall receive a “fixed annual salary” and that “such salary” shall be fixed by the board of county commissioners. The use of the plural “justices” in conjunction with the singular “salary,” upon first impression, suggests that only one salary figure should be fixed, and that all justices in the county shall receive that amount.

However, it may be observed that when Section 1907.47, Revised Code, as initially drafted, was before the Senate for consideration, it was amended so as to provide for a "uniform" salary for justices in certain circumstances. This section, as originally proposed in the Senate, was as follows:

"Section 1907.47. The justices of the peace shall receive a fixed annual salary and such salary shall be determined by the township trustees of the township in which such office of the justice of the peace is situated.

"The township trustees may at any time prior to October 31, 1955 fix the compensation for the office of justice of the peace for the term beginning January 1, 1956. For subsequent terms the township trustees shall fix the compensation of the office of justice of the peace at a meeting held not later than five days prior to the last day fixed by law for filing as a candidate for such office."

The Senate Journal for April 7, 1955, shows that a motion was agreed to which proposed in part as follows: "In line 168, strike out 'the' as it appears the first time in the line, and insert 'a uniform'; strike out 'of' as it appears the first time in the line and insert 'for.'" It will thus be seen that as originally introduced this section would have provided, in general terms, for a salary to be determined by the township trustees; and that as amended on April 7, 1955, the "uniform compensation" provision was applicable only to terms beginning subsequent to January 1, 1956. It is apparent, therefore, that it was the legislative understanding and intention that as to terms beginning after January 1, 1956, the salary was to be "uniform"; but that the language regarding salary in the first paragraph of this section imported no such requirement.

The House Journal for June 16, 1955, shows the adoption of a report which proposed in part as follows: "Strike lines 165 to 170, inclusive." By referring to the original bill, it will be seen that what was thus stricken was the entire second paragraph of Section 1907.47 as it was originally proposed, and subsequently amended in the Senate on April 7, 1955, by the addition of the word "uniform."

It is a well established rule of statutory construction that the action of the legislature in adding words to or deleting them from a bill under consideration in the process of enactment may be regarded as indicative of the meaning of the language finally enacted in a law; and that where a

term is thus stricken from a bill, the resulting enactment should not be so interpreted as though such term were still included therein. See *Caldwell v. State*, 115 Ohio St., 458 (466, 467); 37 Ohio Jurisprudence, 702, Section 393. I conclude, therefore, that this action is indicative of a legislative intent that the board of county commissioners need not fix a salary which is to be paid uniformly to all justices concerned. The statute does not, of course, provide any criterion by which the board is to be guided in fixing variable amounts as salary for the justices concerned and it must, therefore, be concluded that the legislature intended them to exercise their discretion freely in the matter according to any reasonable rule of classification.

As to the allowance for supplies, etc., since it is to be "included" in the salary it must necessarily follow that here, too, there is no requirement of uniformity; and, here too, there being no criterion provided in the statute, the board may exercise its discretion in any reasonable way.

The first three questions presented in Mr. Finefrock's inquiry concern the election of justices of the peace in the current calendar year and thereafter, and the filling of vacancies in the office. The only provisions in Amended Senate Bill No. 319, *supra*, which appear to relate to these questions are Sections 1907.02, 1907.03 and 1907.04, Revised Code, which sections, as effective on January 1, 1956, read as follows:

Section 1907.02:

"When a new justice court district is created, the commission on justice courts of the county shall determine the number of justices of the peace for such district, and the day of election of such justices. The clerk of the court of common pleas shall transmit a copy of such proceedings to the board of township trustees of townships in such district."

Section 1907.03:

"When it appears to the commission on justice courts of a county that there is not a sufficient number of justices of the peace in a justice court district thereof the commission in its discretion may establish one or more additional offices of justice of the peace in such district, and determine the day of election for each such justice of the peace. If it appears to the commission that the number of justices should be decreased, the commission may reduce the number of justices. No justice may be deprived of his commission until the expiration of the term for which he was elected."

Section 1907.04:

"If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the commission on justice courts shall fill such vacancy."

The limitation in Article II, Section 28, Ohio Constitution, as to retroactive laws quite clearly requires that these provisions be given prospective operation only. Because they become effective only on January 1, 1956, it would not be possible at "this time" either to "set up the districts" or to fill a vacancy.

As to the candidacy of persons now running for the office of justice, it will be seen that the only portion of the new enactment which becomes effective prior to January 1, 1956, is Section 1907.47, Revised Code, relating to compensation, and I find nothing in this enactment providing for a special method of transition from the old scheme of election of these officers to the new.

Here it is proper to observe that this enactment cannot be regarded as effecting the abolition of the existing office of justice of the peace and the creation of a new office, for there is not only no express provision to that effect but there is, in Section 1907.03, Revised Code, an express provision against depriving any justice of the peace his commission during the term for which he is elected. In the absence of any indication to the contrary, I am impelled to the conclusion that this inhibition operates in favor of justices presently holding office for a term extending to December 31, 1957. Moreover, since it is beyond the authority of the legislature, under Article II, Section 27, Ohio Constitution, to exercise any power of appointment, the "continuation in office" provision thus made could be valid only in the event that there will be no abolition of the existing office and the creation of a new one.

I am impelled to the conclusion, therefore, that the existing office of justice of the peace will not be abolished as of January 1, 1956, but only that certain changes in the emoluments thereof, in the method of filling vacancies therein, in the fixing of the dates of certain elections therefor, and in the territorial jurisdiction thereof in civil cases, as pointed out in my opinion No. 5791, dated September 27, 1955, will be effected by the enactment here in question.

As already noted, there is no provision in the new enactment which pertains to the election of justices of the peace in the current year. There is, however, a provision in Section 3501.02, Revised Code, relating to elections, which does not appear to have been in any way disturbed by the enactment of Amended Senate Bill No. 319. This section provides in part:

“General elections in the state and its political subdivisions shall be held as follows: * * *

“(D) For municipal and township officers, members of boards of education, judges and clerks of police and municipal courts, and *justices of the peace in the odd-numbered years*: * * *”
(Emphasis added.)

It may be noted that by virtue of the operation of existing section 1907.03, Revised Code, providing for the addition from time to time of new offices of justices of the peace in the several townships by the probate judge, and the holding of elections therefor at the next regular municipal election thereafter, the circumstance has come about whereby some justices are elected for four year terms in one odd-numbered year while others are elected to like terms two years thereafter. Accordingly, under the normal operation of existing statutes certain prospective vacancies in the office of justice of the peace would be filled by election in the November, 1955, election; and since the act here under scrutiny neither abolishes such office nor provides for any special method of transition from the prior legislative scheme to the new, I am impelled to the view that elections for this office should be held in the current calendar year as provided in existing statutes.

As to the election of these officers *after* January 1, 1956, you will observe that the only provisions in the new act which are pertinent thereto are Sections 1907.02 and 1907.03, Revised Code, which provide merely for the designation of an election date where a new district is created, or the number of offices in a district has been *increased*. As to offices other than these, therefore, it would seem that elections would be held as provided in Section 3501.02, *supra*.

This brings us to the final question raised in Mr. Finefrock's inquiry relative to the compensation of constables “under the revised act.”

By reference to Sections 1907.32, 1907.33 and 1907.34, Revised Code, as amended effective January 1, 1956, it will be seen that the fees which

are thereby required to be paid into the county treasury are those for the services of the justice only, none of them relating to the services of constables. Provision for the fees of constables is found in Section 509.15, Revised Code, which provision remains unaffected by this act. Provision is also made in Section 509.16, Revised Code, for the compensation on a salary basis of police constables. Here again the new enactment has effected no change, and it becomes necessary to conclude that both constables and police constables will be compensated for their services on and after January 1, 1956, under the provisions of presently existing statutes.

Accordingly, in specific answer to the several inquiries herein considered, it is my opinion that:

1. Justices of the peace, under the provisions of Section 1907.47, Revised Code, are entitled to a salary during the period September 30, 1955, to January 1, 1956, in such amount as may be fixed by the county commissioners.

2. Neither the salary nor the allowance for supplies, etc., fixed by the board of county commissioners as provided in Section 1907.47, Revised Code, need be a uniform amount for the several justices of the peace concerned. The statute providing no criterion for the fixing of variable amounts as salary, including an allowance for supplies, etc., for such justices the board may exercise their discretion in the matter by any reasonable rule of classification.

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 be abolished.

4. Except Section 1907.47, Revised Code, Amended Senate Bill No. 319, 101st General Assembly, becomes effective on January 1, 1956; and the commission on justice courts created by the provisions of such act is without any authority to act prior to such date.

5. Amended Senate Bill No. 319, 101st General Assembly, does not abolish any existing office of justice of the peace, and elections for such office in the current calendar year will be conducted as provided in pertinent existing statutes. Such election procedure, after January 1, 1956,

the effective date of such act, will be changed only to the extent provided in Sections 1907.02 and 1907.03, Revised Code, as therein amended.

6. Amended Senate Bill No. 319, 101st General Assembly, makes no change in the statutes relating to the compensation of constables.

Respectfully,

C. WILLIAM O'NEILL

Attorney General