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1. JUSTICE OF THE PEACE — JURISDICTION — "FOREGOING EXCEPTED CASES" APPLIES TO EXCEPTIONS 1, 2, 3, FOUND IN SECTION 10225 G.C.

2. TWO TOWNSHIPS "ADJOINING TOWNSHIPS" WHERE CORNER OF ONE TOWNSHIP TOUCHES CORNER OF ANOTHER TOWNSHIP.

SYLLABUS:

1. The phrase "foregoing excepted cases", as the same appears in the fourth paragraph of Section 10225 of the General Code of Ohio, applies to exceptions Nos. 1 and 2, as well as to exception 3 contained in said section.

2. Where the corner of one township touches the corner of another, such two townships are adjoining townships within the meaning of Section 10225, General Code.

Columbus, Ohio, July 30, 1942.

Hon. William G. Wickens, Prosecuting Attorney,
Elyria, Ohio.

Dear Sir:

I have your request for my opinion, which reads as follows:

"I am hereby respectfully soliciting your opinion as to the civil jurisdiction of a Justice of the Peace under the provisions of Section 10225, General Code.

That section provides in part as follows:

'* * * no householder or freeholder of the county shall be held to answer a summons issued against him by a justice in a civil matter in any township of such county other than the one where he resides, except in cases following: 1. When there is no justice of the peace for the township in which the defendant resides. 2. When the only justice residing therein is interested in the controversy. 3. When he is related as father, father-in-law, son-in-law, son, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin, to either of the parties, and there is no justice in the township competent to try the cause in the foregoing excepted cases, the action may be brought before any justice of an *adjoining* township of the same county. * * *'

QUAERE: Does 'excepted cases' referred to in paragraph 3 apply only to the situations noted in paragraph 3, or also to situations noted in paragraphs 1 and 2 as well?

QUAERE: In the plat below, defendant resides in Township 'A' which has no Justice; Plaintiff files his Bill of Particulars in Township 'C' before a justice in 'C'. Is Township 'C' adjoining Township 'A' within the meaning of the statute, Section 10225, General Code?"

Following which quaere appears a diagram showing four townships which meet at a common point, Townships A and C referred to in your question being the diagonally opposite townships.

The sections of the General Code of Ohio which establish the territorial jurisdiction of a Justice of the Peace are three: Section 10223, which provides that the general civil jurisdiction of a Justice of the Peace is limited to the township wherein he is elected and resides; Section 10224, which provides that in certain enumerated cases a Justice of the Peace has jurisdiction co-extensive with the county in which he is elected and resides; and Section 10225, which provides, in so far as is pertinent hereto, as follows:

"Except as provided in the next preceding section no householder or freeholder of the county shall be held to answer a summons issued against him by a justice in a civil matter in any township of such county other than the one where he resides, except in the cases following:

1. When there is no justice of the peace for the township in which the defendant resides;

2. When the only justice residing therein is interested in the controversy;

3. When he is related as father, father-in-law, son-in-law, son, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin, to either of the parties, and there is no justice in the township competent to try the cause, in the foregoing excepted cases, the action may be brought before any justice of an adjoining township of the same county. The justice must state on his docket the reason for his taking jurisdiction: * * *"

It is a cardinal rule in the interpretation of statutes to ascertain and give effect to the intention of the Legislature as expressed in the statute.

In the case of Christ Diehl Brewing Co. v. Schultz, 96 O. S. 27, it is stated:

> "If the language of a statute is ambiguous and its meaning doubtful, a court in construing such statute will endeavor to ascertain and give effect to the intent of the law making body which enacted it."

It is also fundamental that resort may be had to the history of legislation in order to ascertain the intention of the Legislature when the statute to be interpreted contains language of doubtful meaning. 37 O. Jur. 38; State, ex rel. v. Dean, Auditor, 95 O. S. 108, 115.

The original wording for exception No. 3 in Section 10225 of the General Code is the same as that of our existing law. However, it was punctuated differently. All of the acts prior to that of March 14, 1853, were punctuated substantially as appears in 51 O. L. 180, and which reads:

> "3. Where he shall be related, as father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin, to either of the parties, and there is no justice in the township competent to try the cause. In the foregoing excepted cases, the action may be brought before any justice of an adjoining township of the same county, and the justice shall state on his docket the reason of his taking jurisdiction:"

Two subsequent enactments which amended Section 10225, also changed the punctuation appearing therein. In so far as exception No. 3 is concerned, they are as follows:

57 O.L. 23, passed March 10, 1860:

> "Third. — Where he shall be related as father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew or cousin, to either of the parties, and there is no justice in the township competent to try the cause.
>
> In the foregoing excepted cases the action may be brought before any justice of an adjoining township of the same county, and the justice shall state on his docket the reason for his taking jurisdiction. * * * "

72 O. L. 159, passed March 30, 1875:

> " * * * Third. * * * Where he shall be related as father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew or cousin, to either of the parties, and

> there is no justice in the township competent to try the cause in the foregoing excepted cases, the action may be brought before any justice of an adjoining township of the same county and the justice shall state on his docket the reason of his taking jurisdiction."

The punctuation appearing in the Act of 1853 and particularly the Act of 1860 clearly indicates that the wording beginning with the phrase, "in the foregoing excepted cases" relates to the first and second exceptions, as well as to the third one.

It appears from the above quoted previous forms of this Act that the Legislature in re-enacting this particular paragraph when the law was amended in 1875, used exactly the same language for exception number 3 but did change the punctuation of that language and that a strictly grammatical interpretation of this last enactment would make the phrase beginning with the words, "in the foregoing excepted cases," apply only to exception No. 3, whereas the punctuation of the preceding laws make it apply to exceptions 1 and 2, as well as to 3. However, where in the re-enactment of a statute substantially the same wording is used as in the original statute, and it is not clear that the new law is to have a different meaning than the original one, it is presumed that the meaning of the statute is not changed. This rule is stated in 59 C. J. 1059, as follows:

> " * * * Re-enactment of a statute does not affect its meaning or enlarge its scope, in the absence of definite indication of a legislative purpose to that end, and a re-enactment in the same or substantially the same language as the original statute is considered as a continuation of the language so repeated, and not as a new enactment, and in determining its meaning, it must be determined what was intended by the prior Act. * * * "

Another test used in determining the intention of the Legislature in enacting a statute is to consider the mischief to be remedied by the new statute and to determine its reasonableness or absurdity. The territorial jurisdiction of a justice of the peace is determined entirely by Sections 10223, 10224 and 10225 of the General Code of Ohio, and it is clear from the wording of the first paragraph and the first three exceptions of Section 10225 of the General Code of Ohio that the mischief intended to be remedied by this enactment was to provide for an impartial hearing of a question at the nearest justice of the peace court when for one of the reasons listed therein it was impossible to secure such a hearing in the township in which the defendant resided.

An interpretation of the questionable wording in the fourth paragraph of this section, to the effect that it applies only to exception No. 3 and not to exceptions 1 and 2, produces the absurd results that:

1. Some actions would have to be brought in a township where there is no justice of the peace.

2. Some actions would have to be brought in a township where the only justice residing therein would be interested in the controversies which he is to hear.

It is patent that such conclusions could not be the intention of the Legislature. The only practical construction which can be placed on this wording is that it applies to execptions Nos. 1 and 2, as well as to exception 3.

This conclusion is borne out by many years of practical interpretation placed on the section by the justices of the peace.

In the 27th edition (published in 1930) of Swan's Treatise, at pages 12 and 13, the following discussion of the territorial jurisdiction of a justice of the peace, as limited by this section of the General Code, appears:

> "No householder or freeholder resident of the county can be held to answer any summons issued against him by a justice, in a civil matter, in any township of such county other than the one where he resides, except in the cases above stated (referring to the cases set forth in Section 10224 of the General Code) and the following:
>
> 1. Where there is no justice of the peace for the township in which the defendant may reside; or where the only justice residing therein is interested in the controversy; or where he is related, as father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin, to either of the parties, and there is no justice in the township competent to try the cause. In the foregoing excepted cases, the action may be brought before any justice of an adjoining township of the same county, and the justice must state on his docket the reason of his taking jurisdiction. * * *"
>
> (Parenthetical matter mine)

The same question is considered in Douglas' Ohio Justice Guide at page 63, wherein the first three exceptions enumerated in the statute are set forth, following which appears:

> "In any of the above three instances the justice of the adjoining township who issued the summons, must state in his docket why he took jurisdiction."

Another indication of the intent of the Legislature in enacting a statute is the accepted practice under that statute. It was stated in 59 C. J. 1023:

> "On the principle of contemporaneous exposition, common usage and *practice under the statute,* (3 O. 140; 4 O.N.P. n.s. 493) or a course of conduct indicating a particular understanding of it, will frequently be of great value in determining its real meaning, especially where the usage has been acquiesced in by all parties concerned, and has extended over a long period of time; (16 O.S., 599) and, in the absence of an authoritative construction of words carried into a new enactment, the court will be controlled by the generally accepted meaning of the words used at the time of the new enactment. A practicable construction of a statute is not conclusive on the courts, but if unvarying for a long period of time, it should be disregarded only for the most cogent reasons. * * * "

The only published decision concerning any one of the three exceptions about which you inquire is the case of Moore v. O'Dell, 16 O. Op. 460, decided June 30, 1939 by the Common Pleas Court of Pike County. This case involved exception No. 2 and determined that where the only justice of the peace residing in the township of the defendant's residence is interested in the controversy, within the meaning of Section 10225 of the General Code, a justice of an adjoining township has jurisdiction over the defendant's person. This decision was affirmed by the Court of Appeals. It would therefore appear, and it is consequently my opinion, that the language contained in the fourth paragraph of Section 10225 in its present form refers not only to cases in which a justice of the peace is related to a party in the action before him, but also to the cases where the justice is interested in the controversy and to cases where there is no justice of the peace for the township in which the defendant resides.

In answer to your second question, the case of Olmstead v. Schrembs, 20 O. App. 430, held:

> " 'Adjoining' means premises which touch and are in contact with the premises involved."

"Adjoining," as defined in Bouvier's Law Dictionary, Volume I, page 136, is:

"The word in its etymological sense means touching or contiguous as distinguished from line near or adjacent."

The case directly in point is Holmes v. Carley, 31 N.Y. 289, cited in Volume II of Words and Phrases, page 403:

" 'Adjoining' as used in a statute giving jurisdiction to a justice of the peace to try an action, either in the township where the plaintiff resided or before some justice of another township in the same county next adjoining, should be construed to mean that where the corners of four townships met at one point, the diagonal townships adjoined each other at the corner."

Summarizing and specifically answering your questions, it is, therefore, my opinion:

1. The phrase "foregoing excepted cases," as the same appears in the fourth paragraph of Section 10225 of the General Code of Ohio, applies to exceptions Nos. 1 and 2, as well as to exception No. 3 contained in said section.

2. Where the corner of one township touches the corner of another, such two townships are adjoining townships within the meaning of section 10225, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General.