

Adopting this construction of the statute, that is, that it is not a penal statute, but one fixing liability as absolute irrespective of wilfulness or bad motive, it follows that the amount for which such officials may be held is the amount of actual damage or loss suffered by the taxing district by reason of such void contract in no case more than 'the full amount paid from the funds of such county, subdivision or district on account of any such void contract, obligation or order' If as a matter of fact the taxing district sustained no damages, there would be no liability. Stated differently, the official is liable only for any damage caused by his wrongful act.

To hold otherwise, that is, to hold that such officials are liable for such full amount of public funds paid, whether or not loss or damage has been suffered by the county, subdivision or district is to be held that the statute is penal.'

While as above pointed out Section 5661, General Code, construed in the above opinion was repealed and Section 5625-37, supra, enacted in its stead, yet the language in the new section here involved is the same as in the old, and the reasoning and conclusions of the opinion are equally applicable."

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2164.

JUSTICE OF PEACE—AUTHORITY WHEN NEW TOWNSHIP IS CREATED  
—PARTICULAR CASE DISCUSSED.

*SYLLABUS:*

1. *Where a new township is created out of parts of two other townships, a justice of the peace resident of that part of one of said townships which is now included within the limits of the new township is not authorized to exercise jurisdiction in the new township, or any part thereof.*
2. *Where a new township was created in February, 1927, and a person was elected at the November, 1927, election to the office of justice of the peace, under the provisions of Sections 1712, et seq., General Code, the term of office of the person so elected began at the time of his election and runs until December 31, 1929, his successor to be elected at the regular election in November, 1929.*

COLUMBUS, OHIO, May 28, 1928.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

"Your opinion is requested on the following proposition:

West Brecksville Township was erected as a new township February 10, 1927, the territory included therein was formerly parts of Brecksville Township and Royalton Township.

A justice of the peace of Brecksville Township resided in that part of Brecksville Township which was included in West Brecksville Township. He was elected as such justice of the peace in the 1925 election, and his term extends from January 1, 1926, to December 31, 1929.

August 17, 1922, (1927), under the provisions of Section 1712, G. C., the Court of Common Pleas fixed the number of justices of the peace of the new township at one justice and fixed November 8, 1927, as the day for the election of such justice.

Under the provisions of Section 1716 this Brecksville justice of the peace became a justice of the peace of West Brecksville Township and is still serving as such.

At the November, 1927, election another person was elected for the term beginning January 1, 1929, and extending to December 31, 1932. He qualified as such justice and has received a commission as justice of the peace from the Governor.

The question is, whether both of these justices of the peace are legally constituted as such and if the answer to this question is in the negative, which one is qualified and for what term."

In your communication you state that under the provisions of Section 1716, General Code, the justice of the peace residing in that part of Brecksville Township, which is now a part of West Brecksville Township, became a justice of the peace of West Brecksville Township, and is still serving as such.

Section 1716, General Code, provides:

"If a part of a township is attached to another township, justices of the peace residing within the limits of that part so attached shall execute the duties of their office in the township to which such part is attached in the same manner as if elected for such township, and may hold court therein."

You will observe that Section 1716, *supra*, is applicable only where a part of one township is annexed to another township and not where a new township is created. That is to say, if a portion of Brecksville Township had been annexed to Royalton Township, the justice of the peace residing in that portion of Brecksville Township annexed would have become a justice of the peace of Royalton Township and could have exercised jurisdiction throughout Royalton Township. However, you say that West Brecksville Township was created as a new township out of parts of Brecksville and Royalton Townships. If that be true, then Section 1716, General Code, does not apply.

A question similar to the one you present was considered in an opinion of this department rendered April 23, 1928, being Opinion No. 2008. The facts under consideration in that opinion were as follows:

Bedford Village, which was a part of Bedford Township, petitioned the county commissioners under the provisions of Section 3249, General Code, to erect a new township out of that portion of Bedford Township included within the limits of the village. There were two justices of the peace in Bedford Township, both of whom were residents of Bedford Village. Among the questions asked was whether the two justices of the peace could continue to exercise jurisdiction of the territory in which they were originally elected, or whether their jurisdiction would be limited to the new township, or whether they would be without any territorial jurisdiction. The syllabus of that opinion reads as follows:

"Where the county commissioners of a county, acting under the provisions of Section 3249, General Code, create a new township out of that part of the territory of an existing township included within the limits of a municipal corporation therein, duly elected and qualified justices of the peace of such

existing township, residing in such municipal corporation, do not become justices of the peace of the new township. They continue to be justices of the peace of the prior existing township in and for which they were elected, and they may perform the duties and exercise the jurisdiction of their respective offices therein, provided they establish their residences within such township within a reasonable time after the creation of the new township. If they do not establish their residences in said prior existing township within a reasonable time, vacancies will be created in said offices which the trustees of such township will be authorized to fill."

The opinion above referred to contains an extensive discussion of the statutes and also of cases of this and other states and a copy of the same is enclosed herewith. On page nine of the opinion, after quoting various sections of the General Code and discussing certain cases, it was said:

"Section 1714, General Code, above quoted, seems clearly to carry the implication that a justice of the peace in this state is required to reside in the township in and for which he is elected, and that by permanently removing from said township a vacancy is created with respect to his office which the township trustees are authorized to fill. The cases above cited are authority for the proposition that such removal from the township for which a justice of the peace is elected may be effected by a lawful division of the township or by other official action by which the residence of such justice of the peace is placed in another township.

As above noted, Section 1713, General Code, provides that no justice of the peace may be deprived of his commission until the expiration of the term for which he is elected. This provision is not, in my opinion, inconsistent with the conclusion indicated by the authorities above cited that by the detachment of the territory in which a justice of the peace resides, he loses his right to exercise his office in the township for which he was elected and from which the detachment of territory was made, unless within a reasonable time he removes into said township. The action of the board of county commissioners in detaching the territory of Bedford Village from Bedford Township and creating a new township out of the territory so detached does not affect the commissions of the justices of the peace residing in such detached territory or the right of tenure warranted by their said respective commissions, for they may, at their election, continue to exercise the duties of their respective offices and enjoy the privileges and emoluments within the township for which they were elected by removing into the same within a reasonable time after the territory of Bedford Village is detached and a new township therein created."

In view of the foregoing, I am of the opinion that the justice of the peace residing in that part of Brecksville Township, which was included in West Brecksville Township, did not become a justice of the peace of the new township.

In your communication you say that the Court of Common Pleas under the provisions of Section 1712, General Code, fixed the number of justices of the peace of West Brecksville Township at one justice and fixed November 8, 1927, as the date for the election of such justice. You further say that at the November, 1927, election a justice of the peace was elected for the term beginning January 1, 1929, and extending to December 31, 1932, and that the person elected qualified as such justice and has received a commission from the Governor.

I know of no authority for so fixing the term of a justice of the peace in a newly created township, where there was at the time of holding the election no incumbent

of that office. Section 1712, General Code, prescribes how justices of the peace in newly created townships shall be elected. Said section reads:

“When a new township is created, the court of common pleas of the county shall determine on the number of justices of the peace therefor and the day of their election. The clerk of the court shall transmit a copy of such proceedings to the trustees of the township, who shall immediately give notice to the electors to elect such justices in the manner hereinafter provided. If there are no trustees of the township the clerk shall give notice of such election not less than ten days nor more than fifteen days prior thereto by causing advertisements of the time and place of the holding thereof to be posted in three public paces (places) in such township.”

In view of the fact that the Common Pleas Court fixes the day on which an election for a justice of the peace in a newly created township shall be held, it is not necessary that such election be held at the regular or November election, but may be fixed at any time, and is therefore a special election. While in the case under consideration the court fixed the date of the election the same as the November, 1927, election that fact does not, in my opinion, change its character from a special election to a regular election.

There is no statutory provision in the General Code which fixes the date of beginning of the term of a justice of the peace except Section 1715, General Code, which pertains only to persons elected to that office to succeed persons appointed by township trustees to fill vacancies, as provided in Section 1714, General Code. Section 1715 provides that in such a case the term of the person elected shall commence on the first day of January next following his election. The only other reference to terms of justices of the peace is that contained in Section 1713, General Code, to the effect that “all justices of the peace shall be elected for a term of four years.”

Prior to the codification of 1910, Section 1442, Revised Statutes, provided:

“Township officers shall be chosen for a term of two years and justices of the peace for a term of four years, by the electors of each township on the first Tuesday after the first Monday in November in the odd numbered years, and their terms of office shall commence on the first day of January next after their election.”

In the codification, Section 1442, Revised Statutes, was split up into General Code Sections 3268 pertaining to township trustees, 3299 pertaining to township clerks, 3327 pertaining to constables and 4831 pertaining to the time of election of township officers and justices of the peace. Obviously, the provisions of Section 1442 with reference to the beginning of the terms of justices of the peace were, by inadvertence, overlooked in the process of codification. Under such circumstances the provisions of law prior to codification may be looked to to supply the omission or deficiency, and I am of the opinion that a justice of the peace elected at a regular November election serves for a term of four years, beginning the first day of January after his election. However, even if the provisions of Section 1442, Revised Statutes, are read into the code to determine the beginning of the term of a justice of the peace elected at a regular election, that section does not fix the beginning of the term of a justice of the peace elected at a special election in a newly created township.

The Circuit Court of Cuyahoga County had that question under consideration in the case of *State ex rel. Penty vs. Hansen*, 17 O. C. C. (N. S.) 79. The facts in that case were as follows: Corlett Township, Cuyahoga County, was created as a new township on May 4, 1907, whereupon, pursuant to Section 566, Revised Statutes (now Section 1712, General Code), the Common Pleas Court determined that there should

be one justice of the peace for said township and fixed May 25, 1907, as the day for his election. Defendant was duly elected on that day. Relator was elected justice of the peace of said township at the regular election in November, 1909, and qualified and received his commission. The question was for how long a term the justice of the peace elected at the May, 1907, election was elected. The court in the opinion said:

"The statutes regulating such matters are somewhat indefinite and inconsistent, because after the amendment of the Constitution in November, 1905, changing the term of office of a justice of the peace from three years to such even number of years not exceeding four years as may be prescribed by the General Assembly, the latter failed to amend all of the sections of the statutes bearing upon this matter, but did amend Sections 567 and 1442 in such manner as to provide that justices of the peace should be chosen for a term of four years the first Monday in November in the odd numbered years, and that their terms of office should commence on the first day of January next after their election. No change was made in Section 566, and in order that the general scheme of elections as outlined by the constitutional amendment and the amendments of the statutes which the General Assembly did make pursuant thereto may be carried out, so that township and municipal officers, including justices of the peace, shall be elected only at the November election in the odd numbered years, we are required to hold, as we do, that Section 566, which authorizes a special election to be held on a day to be fixed by the common pleas court, simply provides for the election of a justice of the peace to hold office until one can be elected at the first general township election thereafter held.

So interpreting the statute it would seem that defendant's term would have expired on January 1, 1908, and that at the November election in 1907, a justice of the peace should have been elected in Corlett Township to hold office for four years from January 1, 1908. No such election was held, however, until the November election, 1909, at which time the relator was duly elected, and we hold that his term began on January 1, 1910, and will continue for four years."

Applying the rule announced by the court in the above case, I am led to the conclusion that the term of office of the justice of the peace elected at the November, 1927, election in West Brecksville Township began immediately upon his election and runs until December 31, 1929, his successor to be elected at the regular election in November, 1929.

Answering your questions specifically, it is my opinion that:

1. Where a new township is created out of parts of two other townships, a justice of the peace resident of that part of one of said townships which is now included within the limits of the new township is not authorized to exercise jurisdiction in the new township, or any part thereof.

2. Where a new township was created in February, 1927, and a person was elected at the November, 1927, election to the office of justice of the peace, under the provisions of Section 1712, et seq., General Code, the term of office of the person so elected began at the time of his election and runs until December 31, 1929, his successor to be elected at the regular election in November, 1929.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*