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1. WHERE A COURT OF COMMON PLEAS ASSIGNS AREAS OF JURISDICTION TO JUDGES OF A COUNTY COURT DISTRICT, THE COURT MAY DIVIDE THE DISTRICT INTO AREAS OF EQUAL POPULATION—

2. WHERE AN ADDITIONAL JUDGE IS ELECTED TO A COUNTY COURT DISTRICT FOR A TERM COMMENCING ON JANUARY 1, 1963, THE COURT OF COMMON PLEAS OF THE DISTRICT SHOULD DESIGNATE THE AREA OF JURISDICTION AND LOCATION OF COURT OF EACH JUDGE IN THE DISTRICT BY THAT DATE—§1907.071, R.C.—SENATE BILL NO. 462 OF 104TH G.A.

SYLLABUS:

1. Where pursuant to Section 1907.071, Revised Code, a court of common pleas assigns areas of jurisdiction to judges of a county court district, the court may establish areas made up of townships and portions of townships in order to make each area in the district as equal in population to others in the district as is possible under existing conditions. (NOTE: As of October 2, 1961, the procedure for assigning areas in districts exceeding 150,000 population is prescribed by Section 1907.071, Revised Code, as amended by Amended Substitute Senate Bill No. 462 of the 104th General Assembly.)

2. Where pursuant to the 1960 federal decennial census an additional judge is elected in a county court district for a term commencing on January 1, 1963, the court of common pleas of the district should designate the area of jurisdiction and location of court of each judge in the district by that date.

Columbus, Ohio, July 27, 1961

Hon. Thomas A. Bell, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“This office has been asked by a County Judge of Mahoning County to seek a ruling from you regarding the County Court system of this County.

“Background facts are these:—

“1. There are presently four (4) judges serving as County Court Judges in this County.

"2. Under the 1960 decennial census, the population of Mahoning County covered by the County Courts is 133,000 which would allow five (5) County Court Judges.

"3. In order to equitably set up Mahoning County with districts of approximately 30,000 each, portions of existing townships should be joined together.

"We are aware of the provisions of Sections 1907.051 and 1907.071, which set out the bases for establishment for County Courts.

"The questions you are asked to rule on are these :—

"1. In order to set up a County Court district, would the Court of Common Pleas be justified in the making up of one district in joining one township and a portion of another ?

"2. Is the mandatory time for setting up the five (5) judgeships authorized under 1907.051, the date of January 1, 1963, or otherwise?"

Considering your first question, Section 1907.071, Revised Code, reads in part :

"In counties having more than one county court judge, the court of common pleas of such county shall divide the county court district into areas of separate jurisdiction and shall designate the area in which each judge shall have jurisdiction to the exclusion of any other judge of such district, except as provided in section 1907.061 of the Revised Code, and the location where each judge shall hold court. Each such area shall be made up of one or more townships. In assigning areas, the court of common pleas shall make each area as equal in population to others in the district as is possible under existing conditions.

"* * *

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* * *"

Thus, where an additional judge is added as of 1963, the court of common pleas will have the duty to assign an area of jurisdiction to each judge in the district. The law states that each such area shall be made up of one or more townships and shall be as equal in population to others in the district as is possible under existing conditions. Your question is whether an area may contain a portion of a township.

On reading the language involved, I am of the opinion that it must be read to allow an area to contain a portion of a township. The language might, of course, be interpreted to mean that an area must contain only complete townships. But this could conflict with the other provision that areas shall be as equal in population as possible, for, in cases such as at

hand, it is possible to get approximately equal areas only by using portions of townships. Also, a township plus a portion of another township is "one or more townships." I conclude, therefore, that in assigning areas of jurisdiction, the court of common pleas may establish areas made up of townships and portions of other townships in order to make each area in the district as equal in population as possible.

I might note that Amended Substitute Senate Bill No. 462 of the 104th General Assembly, effective October 2, 1961, amends portions of Section 1907.071, *supra*, to read as follows :

"* * * *Except in county court districts exceeding one hundred fifty thousand population each* such area shall be made up of one or more townships. In assigning areas, the court of common pleas shall make each area as equal in population to others in the district as is possible under existing conditions.

"* * *

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"In county court districts exceeding one hundred fifty thousand population, the court of common pleas may assign more than one county court judge to an area of separate jurisdiction, and the judges so assigned shall have jurisdiction within such area to the exclusion of all other judges of such district, except as provided in section 1907.061 of the Revised Code. In any such county court district, the court of common pleas may, from time to time, assign a judge from one area of separate jurisdiction to another such area and redetermine and reassign areas of separate jurisdiction. Upon such redetermination and reassignment, the court of common pleas may consider, in addition to population, the case load of each area of separate jurisdiction.

"* * *

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* * *"

(Emphasized language is added by the bill)

The amendment does not affect the instant case, however, as it deals only with districts exceeding 150,000 population.

As to your second question, Section 1907.071, *supra*, does not specify the date when the court of common pleas is to designate the areas of jurisdiction. In the instant case, however, it would appear that this should be done as of January 1, 1963. The additional judge will be elected in November, 1962, and will take office on January 1, 1963. (Section 1907-051, Revised Code.) In order for such judge to perform his duties he must have an assigned area of jurisdiction and he must have an assigned location where he shall hold court. It is obviously intended that the judge will be authorized to act as soon as his term commences. Accordingly, I

am constrained to conclude that the areas of jurisdiction in the county court district should be designated as of January 1, 1963.

Answering your specific questions, it is my opinion and you are advised:

1. Where pursuant to Section 1907.071, Revised Code, a court of common pleas assigns areas of jurisdiction to judges of a county court district, the court may establish areas made up of townships and portions of townships in order to make each area in the district as equal in population to others in the district as is possible under existing conditions. (NOTE: As of October 2, 1961, the procedure for assigning areas in districts exceeding 150,000 population is prescribed by Section 1907.071, Revised Code, as amended by Amended Substitute Senate Bill No. 462 of the 104th General Assembly.)

2. Where pursuant to the 1960 federal decennial census an additional judge is elected in a county court district for a term commencing on January 1, 1963, the court of common pleas of the district should designate the area of jurisdiction and location of court of each judge in the district by that date.

Respectfully,
MARK McELROY
Attorney General