

2362

EMPLOYEES—COURTS; MUNICIPAL, BAILIFF—COURT HAVING COUNTY-WIDE JURISDICTION—CHARTER OF MUNICIPAL CORPORATION CANNOT LIMIT POLITICAL ACTIVITY OF SUCH EMPLOYEE.

SYLLABUS:

The provisions of a municipal charter limiting the political activities of appointive officers and employees of the city government have no application to the office of bailiff of a municipal court having county-wide jurisdiction.

Columbus, Ohio, July 11, 1958

Hon. Everett Burton, Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Is the bailiff of the Portsmouth Municipal Court an employee of the city of Portsmouth so as to be affected by a provision in the city charter which prohibits any appointive officer or employee from becoming a candidate for nomination or election to any public office.”

The judicial decisions in Ohio, and the rulings of my predecessors in office, holding that officers of municipal courts are municipal rather than state officers, are somewhat difficult to reconcile with the plain holding of the court in *State, ex rel. Cherrington v. Hutsinpillar*, 112 Ohio St., 468, to the effect that all courts are agencies of the state and that municipalities are without power, by charter or otherwise, to create courts and appoint judicial officers. See *State, ex rel. Stanley v. Barnon*, 127 Ohio St., 204; *State, ex rel. Higley v. Shale*, 137 Ohio St., 311; *State, ex rel. Thompson v. Wall*, 17 N.P. (N.S.), 33; Opinion No. 1132, Opinions of the Attorney General for 1952, p. 107; and Opinion No. 1872, Opinions of the Attorney General for 1952, p. 712.

In the case at hand, the municipal court was clearly created by statute, Chapter 1901., Revised Code, and definite provision is made by statute for the several officers of the court. Section 1901.32, Revised Code, creates the office of bailiff of the municipal court and provides that the incumbents of such office shall be appointed by the court, and that the court shall fix their compensation. This section provides also that any appointive municipal court officer “may be dismissed or discharged by the same power which appointed him”. This in effect, makes the bailiff serve at the pleasure of the court; and this being thus plainly provided by statute, it is my opinion that it is beyond the power of a municipal corporation, “by charter or otherwise”, to change what the legislature has thus prescribed, even though it should be conceded, as suggested by the rulings listed above, that for special purposes and to a limited extent, the officers of a municipal court are officers of the municipality in which such court

is established. I am the more strongly impelled to this view in the case of a municipal court having county-wide jurisdiction, for in such case the substantial extension of jurisdiction beyond the municipal limits re-emphasizes the character of the court as (1) established by the state and (2) designed for the discharge of an essentially state function.

Accordingly, and in specific answer to your inquiry, it is my opinion that :

The provisions of a municipal charter limiting the political activities of appointive officers and employees of the city government have no application to the office of bailiff of a municipal court having county-wide jurisdiction.

Respectfully,
WILLIAM SAXBE
Attorney General