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A COUNTY CLERK OF COURTS MAY TAKE AFFIDAVITS, AND SUCH AFFIDAVITS MAY BE FILED WITH HIM— §§1907.101, R.C., 2935.05, R.C., 2935.06, R.C., 2935.09, R.C., OPINION 1297, OAG, 1960, OPINION 2842, OAG, 1962.

SYLLABUS:

Under Section 1907.101, Revised Code, a clerk of a county court is authorized to take affidavits, and affidavits may be filed with such a clerk under Sections 2935.05, 2935.06, and 2935.09, Revised Code.

Columbus, Ohio, July 14, 1962

Hon. Paul R. Young, Prosecuting Attorney
Montgomery County, Dayton 2, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“A request has been made to this office for an opinion by the Attorney General of Ohio with reference to the inherent powers of the clerk of a county court to issue affidavits charging a criminal offense against the laws of the State of Ohio. This request has been made to our office by Robert Nolan, Judge of the Fourth District County Court of Montgomery County, Ohio.

“This office has paid particular attention to the following sections and citations: Section 2935.10; Section 1907.10.1; Opinions of the Attorney General Numbered 1297, dated April 22nd, 1960; and other pertinent sections of the Revised Code of Ohio pertaining to the jurisdiction of the clerk of a county court to issue criminal affidavits.

“Along with the above mentioned sections, we have also paid particular attention to Ohio Revised Code Section 2935.08 but cannot arrive at a firm conclusion as to what the law is in the State of Ohio on the question as aforementioned.

“We would appreciate it if you would pay particular attention to Ohio Revised Code Section 1907.10.1 (B) and relate to us whether the legislature intended to include criminal processes within that section of the code, even though the general section is labeled ‘Civil Docket.’”

Section 1907.101, Revised Code, deals with the clerk of a county court. Division (B) of that section reads, in part, as follows:

“(B) The clerk of a county court shall have general powers to administer oaths, *take affidavits*, and issue executions upon any judgment rendered in the county court, including a judgment for unpaid costs, power to issue and sign all writs, process, subpoenas, and papers issuing out of the court, and to attach the seal of the court thereto, and power to approve all bonds, sureties, recognizances, and undertakings fixed by any judge of the court or by law. He shall file and safely keep all journals, records, books, and papers belonging or appertaining to the court, record its proceedings, and perform all other duties which the judges of the court may prescribe, and keep a book showing all receipts and disbursements, which shall be open for public inspection at all times.

“* * *

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(Emphasis added)

Under the above section, a clerk of a county court may “take affidavits,” and I am of the opinion that this refers to criminal matters as well as civil matters. Although in the published codes, Section 1907.101, *supra*, is included under the heading “Civil Docket,” that heading is inserted by the publisher and has no effect on the law as enacted by the legislature. In my opinion, when the legislature made provision for a clerk of the county court (128 Ohio Laws, 823, 840) it intended to include all powers of that office, both criminal and civil, in said Section 1907.101; and the above-quoted language of division (B) thereof appears to make this clear.

As to the filing of an affidavit in a criminal case, Section 2935.05, Revised Code, reads:

“When a person named in section 2935.03 of the Revised Code has arrested a person without a warrant, he shall, without unnecessary delay, take the person arrested *before a court* or magistrate having jurisdiction of the offense, and shall file or cause to be filed an affidavit describing the offense for which the person was arrested. Such affidavit shall be filed either *with the court* or magistrate, or with the prosecuting attorney or other attorney charged by law with prosecution of crimes before such court or magistrate and if filed with such attorney he shall forthwith file with such court or magistrate a complaint, based on such affidavit.”

(Emphasis added)

Also, Section 2935.06, Revised Code, provides:

“A private person who has made an arrest pursuant to section 2935.04 of the Revised Code or detention pursuant to section 2935.041 of the Revised Code shall forthwith take the person arrested before the most convenient judge *or clerk of a court of record* or before a magistrate, or deliver such person to an officer authorized to execute criminal warrants who shall, without unnecessary delay, take such person before the court or magistrate having jurisdiction of the offense. The officer may, but if he does not, the private person shall file or cause to be filed in such court or before such magistrate an affidavit stating the offense for which the person was arrested.”

(Emphasis added)

And, Section 2935.09, Revised Code, reads:

“In all cases not provided by sections 2935.02 to 2935.08, inclusive, of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer, or a private citizen having knowledge of the facts, shall file with the judge *or clerk of a court of record*, or with a magistrate, an affidavit charging the offense committed, or shall file such affidavit with the prosecuting attorney or attorney charged by law with the prosecution of offenses in court or before such magistrate, for the purpose of having a complaint filed by such prosecuting or other authorized attorney.”

(Emphasis added)

Under both Sections 2935.06 and 2935.09, *supra*, the affidavit may be filed with “a clerk of a court of record.” County courts are not courts of record until January 1, 1963 (Section 1907.012, Revised Code), thus the question arises whether affidavits may be filed under those sections with a clerk of a county court.

In Opinion No. 1297, Opinions of the Attorney General for 1960, page 292, I held as follows:

“A clerk of courts who also acts as clerk of a county court under Section 1907.101, Revised Code, may, under the provisions of Section 2935.10, Revised Code, sign and issue a warrant for the arrest of a person charged with either a misdemeanor or a felony.”

In Opinion No. 2842, Opinions of the Attorney General for 1962, issued on February 28, 1962, the syllabus reads:

“A clerk of a county court appointed pursuant to Section 1907.101, Revised Code, may, under the provisions of Section

2935.10, Revised Code, sign and issue a warrant for the arrest of a person charged with either a misdemeanor or a felony.”

In determining whether a clerk of a county court has the power to issue warrants, I faced the same conflict in laws which is here apparent. In Opinion No. 2842, *supra*, I stated in that regard:

“Further, Section 1907.101, *supra*, is a specific section as to the authority of a clerk of a county court to issue process, and as such constitutes an exception to the general provisions of Sections 2935.06, 2935.09 and 2935.10, *supra*, dealing with warrants, where any conflict exists. In this regard, it is stated in *Fisher Bros Co., v. Bowers*, 166 Ohio St., 191, at page 196:

“We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter. *State, ex rel. Steller et al., Trustees, v. Zangerle, Aud.*, 100 Ohio St., 414, 126 N.E., 413; *State, ex rel. Elliott Co., v. Connor, Supt.*, 123 Ohio St., 310, 175 N.E., 200; *Acme Engineering Co. v. Jones, Admr.*, 150 Ohio St., 423, 83 N.E. (2d), 202; *Johnson v. United Enterprises, Inc., ante*, 149.’”

In the instant matter, Section 1907.101, *supra*, authorizes a clerk of a county court to take affidavits. I deem this to be a special provision of law authorizing the clerk to take affidavits in criminal as well as civil matters. As to the filing of affidavits, Sections 2935.06 and 2935.09, *supra*, are, however, of a general nature in that they pertain to the filing of affidavits in general; and I thus conclude that the provisions of Section 1907.101, *supra*, constitute an exception to the latter sections so far as the taking of an affidavit by a clerk of a county court is concerned.

Accordingly, it is my opinion and you are advised that under Section 1907.101, Revised Code, a clerk of a county court is authorized to take affidavits, and affidavits may be filed with such a clerk under Sections 2935.05, 2935.06, and 2935.09, Revised Code.

Respectfully,

MARK McELROY

Attorney General