

within the territory designated by the auditor of state as entitled thereto on the basis of the total enumeration of youth of school age in each whole district entitled thereto, and the enumeration of youth of school age residing in parts of districts so entitled, and all other money in the county treasury for the support of common schools and not otherwise appropriated by law, shall be apportioned annually to the school districts and parts of districts in the county in the proportions in which such districts and parts of districts are entitled to share in the distribution of the levy of two and sixty-five hundredths mills provided in Section 7575 of the General Code."

As you will observe, the last sentence provides that all other money in the county treasury for the support of common schools and not otherwise appropriated by law shall be apportioned annually to the school districts and parts of districts in the county in the proportion in which such districts or parts of districts are entitled to share in the distribution of the levy of two and sixty-five hundredths mills provided in Section 7575 of the General Code. It is therefore apparent that the moneys concerning which you inquire should be added to any other moneys in the county treasury for the support of the common schools and not otherwise appropriated, and these sums should be apportioned and distributed by the county auditor at the times and in the manner provided for the apportionment and distribution of the proceeds of the levy of two and sixty-five hundredths mills provided in Section 7575, General Code. Detailed instructions as to the apportionment and distribution of the tax levy are contained in Section 7600, *supra*, and I assume that the auditor will have no difficulty in following his usual practice in this respect.

You are accordingly advised that moneys paid into the county treasury representing the proceeds of personal property escheated to the state by virtue of Section 8579, General Code, should be apportioned and distributed to the various school districts and parts of districts in the county at the times and in the manner provided for the apportionment and distribution of the levy of two and sixty-five hundredths mills, as provided in Section 7575 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2008.

JUSTICE OF PEACE—AUTHORITY WHEN NEW TOWNSHIP IS CREATED.

SYLLABUS:

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.

COLUMBUS, OHIO, April 23, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

Gentlemen:—This is to acknowledge receipt of your recent communication requesting my opinion on certain questions therein stated. Your communication is as follows:

“We respectfully request your written opinion upon the following matter, which has been submitted to this department by one of our State Examiners:

Bedford Village, which is a part of Bedford Township, has petitioned the county commissioners as provided in Section 3249 G. C., to erect a new township out of the portion of Bedford Township included in the limits of Bedford Village.

There are two justices of the peace in Bedford Township both of whom have a residence in Bedford Village. We wish to know what the status of these justices of the peace is in case a new township is formed.

Question 1. Could they continue to exercise jurisdiction over the same territory in which they were originally elected or would their jurisdiction be limited to the new township or, would they be without any territorial jurisdiction?

Question 2. Would this create a vacancy in the office of the justice of the peace in original Bedford Township, and if so, how would such vacancy be filled?”

Section 3249, General Code, referred to in your communication, reads as follows:

“If the limits of a municipal corporation do not comprise the whole of the established township or townships in which it is situated, or if by change of the limits of such corporation, or otherwise, they include territory lying in more than one township, and the council of such corporation shall in either case, by a vote of the majority of the members thereof, petition the commissioners of the proper county for a change of township lines so as to make them identical in whole or in part with the limits of the corporation, or to erect a new township out of the portion of such township or townships included within the limits of such municipal corporation, the commissioners on presentation of such petition, with the proceedings of the council duly authenticated, at a regular or adjourned session, may change the boundaries of the township or townships, or erect such new townships accordingly.”

By reason of the amendments to the Constitution of the State which went into effect January 1, 1913, the office of justice of the peace then ceased to be a constitutional office. Acting under the authority conferred upon it by Section 1 of Article IV of the Constitution, as amended in 1912, to establish courts inferior to the Court of Appeals, the Legislature on April 18, 1913 (103 v. 214), enacted Section 1711-1, General Code, which reads as follows:

“That there be and is hereby established in each of the several townships in the several counties of the state of Ohio, except townships in which a court

other than a mayor's court now exists or may hereafter be created having jurisdiction of all cases of which justices of the peace have or may have jurisdiction, the office of justice of the peace.

The jurisdiction, powers and duties of said office, and the number of justices of the peace in each such township shall be the same as was provided by the laws in force on September 3rd, 1912. All laws and parts of laws in force on said date, in any manner regulating such powers and duties, fixing such jurisdiction or pertaining to such office or the incumbents thereof are hereby declared to be and remain in force until specifically amended or repealed, the same as if herein fully re-enacted."

Section 1713, General Code, so far as pertinent to any of the questions here presented, provides:

"* * * All justices of the peace shall be elected for a term of four years. No justice may be deprived of his commission until the expiration of the term for which he was elected."

With respect to the civil jurisdiction of justices of the peace, Section 10223, General Code, provides as follows:

"Unless otherwise directed by law, the jurisdiction of justices of the peace in civil cases, is limited to the township wherein they have been elected, and wherein they reside. No justice of the peace shall hold court outside of the limits of the township for which he was elected."

Under the provisions of Section 1716, General Code, where a part of the township is attached to another township or is annexed to a municipal corporation which is co-terminous with another township, justices of the peace residing within the limits of that part so attached may execute the duties of their office in the township to which such part is attached or annexed in the same manner as if elected for such township. *State ex rel. vs. Morse*, 94 O. S. 435; *Pfeiffer vs. Green*, 3 O. N. P. 156.

However, this is not a case where part of one township is to be attached to another township, as it appears from your communication that it is proposed to erect a new township out of a part of an existing township. Section 1712, General Code, which is applicable to these facts and the questions here presented, reads as follows:

"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 places in such township."

It is quite clear from the provisions of Section 1712, General Code, above quoted, that the justices of the peace of Bedford Township who have their residence in Bedford Village in said township will have no authority to act as justices of the peace of the new township that is to be created. Under the provisions of said section the Common Pleas Court of the county on the creation of the new township will determine the number of justices of the peace for said township and thereupon such justices of the

peace for the new township will be elected in the manner provided for in said section and will continue to hold office until their successors are elected at the first general township election thereafter held. *State ex rel. vs. Hansen*, 17 O. C. C. (N. S.) 79.

The next question here presented is whether upon creation of the new township out of that part of Bedford Township which includes Bedford Village, the justices of the peace of Bedford Township, referred to in your communication, who now reside in Bedford Village, will continue to hold their respective offices of justices of the peace of Bedford township.

In addition to the other statutory provisions above noted, this question likewise requires a consideration of the provisions of Section 1714, General Code, which reads as follows:

"If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the trustees within ten days from receiving notice thereof, by a majority vote, shall appoint a qualified resident of the township to fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of the courts of such vacancy and the date when it occurred."

As a general rule, in the absence of statutory provisions affecting the question, where by constitutional or statutory provision, an elected officer is required to reside in the political subdivision or district for which he is elected, a transfer of territory of such political subdivision or district in which territory such officer resides will have the effect of creating a vacancy in his office unless such officer within a reasonable time establishes his residence in the territory of the political subdivision from which the transfer is made.

In the case of *State of Ohio ex rel. Ives vs. Choate*, 11 Ohio, 511, it was held that where the Legislature changes the boundaries of a county and such change places an associate judge within the limits of another county, such associate judge forfeits his office unless within a reasonable time he removes into the limits of the county for which he was elected.

In the case of *State of Ohio ex rel. Harishorn vs. Walker*, 17 Ohio, 135, it was held that on the formation of a new county, the county commissioners of any of the counties from which the new county is formed, who reside within its limits, cease to be commissioners of the old county, unless they move into it.

In the case of *The People vs. Morrell*, 21 Wend. (N. Y.) 563, it was held:

"Where a county is divided and two separate and distinct counties formed out of it by act of the Legislature, to one of which a new name is given, whilst the other it is declared shall be and remain a separate and distinct county by the name of the county as it existed previous to the division, the judges of the county courts appointed previous to the division who happen to reside in that portion of the territory distinguished as a county with a new name, under the operation of the act requiring judges of county courts to reside within the county for which they are appointed lose their offices, and are no longer competent to act under their commissions * * *,"

In the case of *Mauck vs. Lock*, 70 Iowa, 266, it appeared that a statute of the state of Iowa provided that every civil office should be vacated when the incumbent ceased to be a resident of the district in which the duties of his office were to be exercised. Another statute conferred on the township trustees of a township the power to redistrict the same for highway purposes. It was held that when by the exercise

of such power a road supervisor elected for a certain district was made a resident of another district he ceased to be a road supervisor in the district for which he was elected. The court in its opinion in this case said:

“If the plaintiff had removed from the district, it seems entirely clear that his office would be vacant. The fact is, however, that his residence territorily is not changed. The change which has occurred consists in the fact that the territory upon which he resides has, by change of boundaries, been caused to fall within a different district. But, this being so, the plaintiff has become a resident of district No. 1. and it seems to follow that he has ceased to be a resident of district No. 4. It was, it is true, held in *State vs. Board of Supervisors*, 21 Wis., 443, that a county supervisor's office did not become vacant by reason of such change in the boundaries of the districts that the district for which the supervisor was elected had become lost. But the decision turned upon the fact that, though elected by and for a particular district of the county, his duties were not local; but, on the other hand, he was essentially a county officer, and inasmuch as he had not ceased to be a resident of the county, he had not ceased to be a resident of the district, within the meaning of the statute under which it was claimed that his office had become vacant.

There is no question but that the plaintiff's duties were local; and, whether we regard the original district No. 4 as extinguished or merely changed by reason of the setting off of the particular territory in which the plaintiff happened to reside, in our opinion he ceased to be a resident of district No. 4, and consequently ceased to be supervisor of the district.”

In the case of *Frazer vs. Miller*, 12 Kas. 459, it was held that where by the division of a township, one of its two justices of the peace is thrown into a new township, there is created a vacancy in the office of the justice of the peace of the original township which may be filled by appointment. In this case it appeared that in April, 1871, one James W. Miller and one Thomas Wheeler were duly elected and qualified as the justices of Clay Center Township, Clay County, Kansas. In December, 1871, the county commissioners divided the township. By such division Miller was left in Clay Center Township and Wheeler was thrown into the new township. With respect to the effect of this action of the county commissioners in dividing said township, the court in its opinion, said:

“By the division Wheeler vacated the office of justice of Clay Center Township. He did not, it is true, cease to be a justice, but he ceased to be a justice of Clay Center Township, and became a justice of another township. There could be no question but that, if the boundaries of Clay Center Township had not been disturbed, Wheeler's office would have become vacant on his removal from the township. He was removed from the township, not by his own volition, but by the act of partition. The result is the same, though the manner of accomplishment is different. There was a removal from the township, and thereby the office became vacant.”

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.

Touching this point, I note the case of *Adams vs. Roberts*, 119 Ky. 364. In that case it appeared that the constitution of the state provided that no person should be eligible to the office of commonwealth attorney who had not resided for one year in the county and district in which he was a candidate. Another provision of the constitution empowered the General Assembly to establish judicial districts. After the election of a commonwealth attorney for one of the judicial districts of the state, the county in which such elected officer resided was detached from the judicial district for which he was elected and made a part of a new district. The court held:

“* * * that the change in the district did not disqualify him for the office, since, if the Constitution required a continuous residence, failing which an abandonment would follow, the officer might change his residence to a place within the district, and the statute could not deprive him of his office without violating the Constitution, which protects an officer from removal by the Legislature other than by impeachment.”

So in the case here presented no action taken by the board of county commissioners under Section 3249, General Code, can have the effect of abolishing the tenure of any rightful incumbent of the office of justice of the peace in the township affected by such action, for the reason that although the territory in which such justice resides is detached, he still has the power and privilege of exercising the duties of his office by changing his residence to a place within the old township.

Recurring to the questions presented in your communication, and by way of specific answer thereto, it may be observed that were it not that the provisions of Section 1712, General Code, otherwise provide, the justices of the peace here in question residing in Bedford Village, on the detachment of the territory of such village and the creation of the same into a new township, would continue to exercise the duties of their respective offices of justice of the peace of the new township. However, Section 1712, General Code, does otherwise provide, and with respect to this question I am of the opinion that said justices of the peace will not continue to exercise any civil jurisdiction as justices of the peace in said new township. However, I am further of the opinion that said justices of the peace may continue to perform the duties and exercise the jurisdiction of their respective offices in Bedford Township by moving into said township within a reasonable time after action is taken after the detachment of the territory of Bedford Village and the creation of the new township.

Respectfully,

EDWARD C. TURNER,
Attorney General.