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JUSTICE OF PEACE—AUTHORIZED TO FILL VACANCY ON BOARD OF TOWNSHIP TRUSTEES ONLY IN TOWNSHIP WHERE ELECTED AND WHERE HE RESIDES—VACANCY IN TOWNSHIP WHERE NO JUSTICE—TOWNSHIP INCLUDED IN DISTRICT IN WHICH JUSTICE ELECTED IN AND RESIDENT IN ANOTHER TOWNSHIP—VACANCY SHOULD BE FILLED BY PROBATE JUDGE—SECTION 503.24 RC.

SYLLABUS:

A justice of the peace is authorized, under the provisions of Section 503.24, Revised Code, to fill a vacancy on the board of township trustees only in the township in which such justice was elected and where he resides; and where such a vacancy occurs in a township where there is no such justice, even though such township be included in a district in which a justice, elected in and resident in another township, exercises civil jurisdiction, the vacancy should be filled by the probate judge as provided in such section.

Columbus, Ohio, April 10, 1956

Hon. Fred F. Fox, Prosecuting Attorney
Noble County, Caldwell, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Would you please give me an opinion relative to Section 503.24 of the Revised Code of Ohio concerning the appointment for a vacancy in the Board of Trustees of a Township? This county has been districted and as one district and we have two Justice's of the Peace in this county, both having county wide jurisdiction. Under these circumstances will you please advise me whether one of the Justice of the Peace, the one having the oldest commission, has the right of appointment of such vacancy or the Probate Judge?

“Neither one of the Justice's of the Peace live in the Township where such vacancy occurred.”

In my Opinion No. 5791, Opinions of the Attorney General for 1955, dated September 27, 1955, it was held in part:

“1. On and after January 1, 1956, the effective date of the

amendment of Section 1909.01, Revised Code, as effected by the enactment of Amended Senate Bill No. 319, 101st General Assembly, the territorial jurisdiction of justices of the peace in *civil* cases will be expanded to include the justice court district in which the justices concerned 'were elected and in which they reside'; but no comparable change in the territorial jurisdiction of justices in *criminal* cases is effected by such enactment, and the provisions of Section 2931.02, Revised Code, limiting such territorial jurisdiction, with certain enumerated exceptions, to 'the township in which he is elected and where he resides,' remain undisturbed by this enactment."

In my Opinion No. 6122, Opinions of the Attorney General for 1955, dated December 29, 1955, I held:

"The provisions of Amended Senate Bill No. 319, 101st General Assembly, do not have the effect of abolishing the office of justice of the peace, such office being continued in existence as a township office within the meaning of Section 3929.17, Revised Code, under the provisions of which section the premium on the bond of the officer concerned must be paid by 'the township in which he is elected and where he resides.'"

It would appear, therefore, that each of the two justices described in your inquiry is still essentially an officer of "the township in which he is (was) elected and where he resides," and that he is in only a very limited sense an officer of another township included in a district with such township of residence.

Provision is found in Section 503.24, Revised Code, for the filling of a vacancy in the office of township trustee, as follows:

"If, by reason of the nonacceptance, death, or removal of a person chosen to an office in any township except trustee, at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term.

"If a township is without a board or there is a vacancy in such board, the justice of the peace of such township holding the oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, shall appoint suitable persons, having the qualifications of electors in the township, to fill such vacancies for the unexpired term.

"Wherever, in any township, a municipal court replaces the justices of the peace, the municipal judge or the presiding municipal judge if there is more than one, may fill vacancies on the

board. In those townships wherein there are no justices of the peace or municipal judges, the probate judge may fill vacancies on such board."

At the time of this enactment the office of justice of the peace was purely a township office, and it is entirely clear that such enactment did not authorize such an officer to act in filling a vacancy with respect to any township other than that of his residence and in which he was elected. I find nothing in the provisions of Amended Senate Bill No. 319, 101st General Assembly, whereby numerous changes were made in Chapter 1907., Revised Code, which would indicate an intent to broaden the scope of Section 503.24, supra. It follows, therefore, that in the case described there is no justice of the peace in the township concerned within the meaning of that section, and that the vacancy should accordingly be filled by the probate judge as therein provided.

In specific answer to your inquiry, it is my opinion that a justice of the peace is authorized, under the provisions of Section 503.24, Revised Code, to fill a vacancy on the board of township trustees only in the township in which such justice was elected and where he resides; and where such a vacancy occurs in a township where there is no such justice, even though such township be included in a district in which a justice, elected in and resident in another township, exercises civil jurisdiction, the vacancy should be filled by the probate judge as provided in such section.

Respectfully,

C. WILLIAM O'NEILL

Attorney General