

1922

THE APPOINTMENT OF AN ASSIGNMENT COMMISSIONER
IN ANY COUNTY HAVING TWO JUDGES OF THE COURT OF
COMMON PLEAS—§§2335.03, .04 R.C.

SYLLABUS:

The court of common pleas in any county having two judges of the court of common pleas may appoint an assignment commissioner, but such commissioner should be appointed pursuant to the provisions of Section 2335.04, Revised Code, and his compensation may not exceed \$1800 per year.

Columbus, Ohio, December 24, 1960

Hon. Edward R. Ostrander, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“This county recently by action of the State Legislature was authorized to have a second Court of Common Pleas Division of Domestic Relations, thus having for the first time in this county two judges of the Common Pleas Court. Since under the existing statutes one will also be handling the juvenile matters, it is the desire of the Judges to appoint an Assignment Commissioner and they have requested my opinion concerning the compensation which could be paid to such a commissioner to be appointed by them jointly.

“I note that Section 2335.03 authorizes the appointment of an Assignment Commissioner where more than two Judges hold court at the same time. The following Section 2335.04 provides for the appointment of a commissioner in a county having only the one Judge of the Court of Common Pleas. I would therefore appreciate your advising as to whether in the event the two Judges should appoint the same commissioner they would be limited in his compensation to the \$1800 set forth in the last mentioned section or whether the salary could be such as might be fixed jointly by the two Judges.”

Section 2301.02, Revised Code, provides in part:

“The number of judges for each county, the time for the next election of said judges in the several counties, and the beginning of their terms shall be as follows:

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“In Lake county, two judges, one to be elected in 1958, term to begin January 1, 1959, the second to be elected in 1960, term to begin January 2, 1961;

“* * *

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Section 2301.03 (N), Revised Code, provides in part:

“In Lake county, the judge of the court of common pleas whose term begins January 2, 1961, and successors shall have the same qualifications, exercise the same powers and jurisdiction, and received the same compensation as the other judge of the court of common pleas of Lake county, and shall be elected and designated as a judge of the court of common pleas, division of domestic relations. * * *”

Section 2335.03, Revised Code, provides:

“The judges of the court of common pleas of any county where *more than two* such judges hold court at the same time, may, in joint session, appoint assignment commissioners to attend to the assignment of all cases for trial and to discharge such other duties as the court requires. Such assignment commissioners shall be allowed such compensation for their services as the court appointing them determines, and shall be paid monthly from the county treasury. An entry shall be made in the court journal designating the persons appointed as assignment commissioners, and fixing their compensation.” (Emphasis added).

Section 2335.04, Revised Code, provides:

“When the business of the court of common pleas requires, such court, *in any county having not more than one* judge of the court of common pleas, may appoint an assignment commissioner whose duty it will be to make assignments of cases to be tried in the court under the direction of the judge holding such court. Such commissioner shall hold office during the pleasure of the court making the appointment and shall receive such compensation as is fixed by the court making the appointment, which amount shall not exceed eighteen hundred dollars per year, payable monthly.” (Emphasis added)

Section 2301.02, Revised Code, clearly states that there shall be two common pleas judges in Lake county and Section 2301.03 (N), Revised Code, indicates that the judge who takes office effective January 2, 1961 shall be a judge of the court of common pleas, division of domestic relations. Section 2301.03 (N), Revised Code, further provides that this judge shall have the same powers and jurisdiction as the other judge of the common

pleas court. I considered in Informal Opinion No. 40, Informal Opinions of the Attorney General for 1959, the question of the jurisdiction of a judge of the division of domestic relations under Section 2301.03, Revised Code, and ruled:

“Paragraphs (A), (C), (D), (E), (G), (H), (I), (J), and (K) of the aforementioned section state that the judges shall be elected and designated as judges of the Court of Common Pleas, division of domestic relations for Franklin, Lorain, Lucas, Mahoning, Richland, Stark, Summit, Trumbull and Butler counties, and that they ‘shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas * * *’, and have jurisdiction over all juvenile court matters.

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“From the foregoing it is my opinion that the judges elected and designated as judges of the domestic relations division of Franklin, Lorain, Lucas, Mahoning, Richland, Stark, Summit, Trumbull and Butler counties would have powers and jurisdiction and could assist in other trials in both civil and criminal branches of the common pleas court in their respective counties; * * *”

In view of the foregoing, therefore, it is apparent that Lake county has two judges of the court of common pleas.

Coming to Sections 2335.03 and 2335.04, Revised Code, which are set forth above, it will be noted that the first of these sections provides for the appointment of assignment commissioners in counties having *more than two judges* while the other section allows for the appointment of an assignment commissioner in a county having *not more than one judge*. Neither section refers to the situation where a county has exactly two judges and I am unable to find any other section of law authorizing the appointment of an assignment commissioner in such an instance.

While, as noted, specific authority under the statute is lacking, I deem it logical to assume that the legislature did not intend to create a situation where a one judge court and courts having more than two judges are entitled to an assignment commissioner, or commissioners, but a court having exactly two judges may not have an assignment commissioner; and I believe that the lack of specific authority must be attributed to oversight by the legislature. It would be absurd on the one hand to hold that a one-judge court is in need of an assignment commissioner while at the same time saying that a two-judge court does not have such a need, and it is to be assumed that the legislature intends to exact only that which is

reasonable, and will not be presumed to have enacted a law producing unreasonable or absurd consequences (37 Ohio Jurisprudence, Section 352, pages 643, 644).

Under Section 2335.03, *supra*, a court of common pleas may appoint assignment commissioners with no maximum limit in salary only if said court is made up of more than two judges. Clearly then, a court having only two judges may not make appointments under that section. While Section 2335.04, *supra*, refers to a county having not more than one judge, I believe that the evident intent was to allow a court at least one assignment commissioner. Reading the two sections together, I deem the intent to be to allow the appointment of commissioners under Section 2335.03, *supra*, in all courts having more than two judges, and to allow the appointment of a commissioner under Section 2335.04, *supra*, if a court has at least one judge.

In Lake county, therefore, the court of common pleas may pursuant to Section 2335.04, *supra*, appoint an assignment commissioner, but the compensation of said commissioner may not exceed \$1800 per year.

Accordingly, it is my opinion and you are advised that the court of common pleas in any county having two judges of the court of common pleas may appoint an assignment commissioner, but such commissioner should be appointed pursuant to the provisions of Section 2335.04, Revised Code, and his compensation may not exceed \$1800 per year.

Respectfully,
MARK McELROY
Attorney General