

2992.

MUNICIPAL COURT ACT—CITY OF CANTON—OFFICE OF JUSTICE OF THE PEACE OF CANTON AND PLAIN TOWNSHIPS ABOLISHED.

SYLLABUS:

The office of justice of the peace ceased to be a constitutional office by the adoption of the constitution of Ohio in 1912. Said office was re-established as a legislative office by the general assembly of Ohio in 103 Ohio Laws, 214. The municipal court act known as Amended Senate Bill 158 for the city of Canton and the townships of Canton and Plain clearly abolished the office of justice of the peace in said townships and provided in their stead for judges of the municipal court, with all the jurisdiction, powers and duties heretofore exercised by said justices of the peace, together with additional jurisdiction, powers and duties as therein mentioned.

COLUMBUS, OHIO, December 9, 1925.

HON. C. B. McCLINTOCK, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting the opinion of this department as follows:

“Canton township, Stark county, now has three justices of the peace, Charles E. Heminger, John H. Krumlauf, and A. B. Correll. The terms of Charles E. Heminger and John H. Krumlauf expire January 1st, 1926. The term of A. B. Correll expires January 1st, 1928.

“The last legislature passed an act known as Amended Senate Bill 158. It was the intention of this act to abolish the office of the justices of the peace in this township, except that of A. B. Correll, whose term does not expire until January 1st, 1928.

“It is now contended by attorneys representing John H. Krumlauf and Charles E. Heminger that they will continue in office and that their positions are not abolished by this act. I desire an opinion from you as to whether or not Charles E. Heminger and John H. Krumlauf can legally continue to act as justices of the peace after January 1st, 1926.”

Section 1 of the municipal court act for the city of Canton is as follows:

“That there be and hereby is created a court of record for the city of Canton and the townships of Canton and Plain, in the county of Stark, in the state of Ohio, to be styled, ‘The Municipal Court of Canton, Ohio,’ the jurisdiction whereof shall be as in this act fixed and determined.”

Section 3 of the act pertaining to the jurisdiction of the newly established municipal court is as follows:

“Said municipal court herein established shall have the same jurisdiction in criminal matters and prosecutions for misdemeanors and for violations of ordinances as mayors of municipalities, justices of the peace and police courts, and as otherwise provided, and in addition thereto shall have ordinary civil jurisdiction within the limits of said city of Canton and town-

ships of Canton and Plain in the county of Stark and State of Ohio, in the following cases:

"(1) In all actions and proceedings of which justices of the peace, or such courts as may succeed justice of the peace courts, have or may be given jurisdiction." * * *

In section 12 pertaining to the powers and duties of the judges of this court the following provision is made:

"The judges of the court may summon and impanel jurors, tax costs; compel the attendance of witnesses, jurors and parties; issue process; preserve order; punish for contempt; and may exercise all such powers, now or hereafter conferred upon the court of common pleas or judges thereof, or upon justices of the peace, upon police courts of cities or judges thereof or upon mayors of municipalities, as are necessary for the exercise of the jurisdiction herein conferred and for the enforcement of the judgment and orders of the court."

The section of the General Code providing for the establishment of the office of justice of the peace, defining his jurisdiction, powers and duties, is section 1711-1 G. C., and is as follows:

"Sec. 1711-1. Establishment of the office of justice of the peace. —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.

"Jurisdiction, powers and duties. —The jurisdiction, power 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 incumbent thereof are hereby declared to be and remain in force until specifically amended or repealed, the same as if herein fully re-enacted."

In the case of *Forbes vs. Bolton*, 20 N. P. (N. S.) 449, the court said:

"The purpose of this act was to reestablish the office of justice of the peace as a legislative office, that office having ceased to be a constitutional office by the adoption of constitutional amendments in force Jan. 1, 1913."

In the case of *State ex rel. Goodman vs. Redding*, 87 O. S. 388, the syllabus is as follows:

"A justice of the peace, holding office January 1, 1913, is entitled to serve as such official until the expiration of the term of office to which he has been elected, and the adoption of the amendments to the Constitution, September 3, 1912, did not deprive him of that right."

The question in the instant case, however, is not whether or not the justices may continue to the end of their term for which they were elected, but no election having

been had for their successors as justices of the peace on November 3rd, may they continue to serve beyond the end of their terms for which they were elected. Or putting it in another way, was the office of justice of the peace abolished in these two townships upon the passage of the Municipal Court Act by the General Assembly of Ohio.

As heretofore stated, the office of justice of the peace since the adoption of the constitution of 1912 became a statutory office and not a constitutional office. It is therefore subject to the provisions made by the General Assembly concerning this office. Section 1711-1 G. C. reestablishing the office of justice of the peace as a legislative office, provides:

"That there be and is hereby established in each of the several townships * * * except townships in which a court other than a mayor's court now exists *or may hereafter be created* * * * the office of justice of the peace."

The Supreme Court in the case of *State ex rel. vs. Redding*, 87 O. S. 398, supra, said:

"The question whether, or not statutory enactment will be required to continue in office, by election or otherwise, justices of the peace, after the expiration of their present terms, is a matter which can be definitely settled by the general assembly under its authority to establish inferior courts."

And, again, on page 400, as follows:

"The legislature is clothed with power to establish inferior courts, if it finds it necessary, with jurisdiction over matters which, for years, have been exclusively with justices of the peace. This it can do under the provision of article IV, section I, of the amendments."

Section 37 of the act in question as found in 111 O. L., page 314, provides: Section 1579-702 G. C.:

"All proceedings, judgments, executions, dockets, papers, moneys, property and persons subject to the jurisdiction of courts of all justices of the peace for Canton and Plain townships in Stark county, 'on' the expiration of the term of office of the last justice of the peace in such townships shall be turned over to the municipal court hereby created, and all jurisdiction and powers of such justices of the peace shall thereupon be vested in the municipal court; and thereafter such causes shall proceed in the municipal court as if originally instituted therein, the parties making such amendments to their pleadings as required to conform to the rules of said court; and such courts of said justices of the peace, and all jurisdiction and powers thereof, shall thereupon be abolished and wholly cease, and no justices of the peace or constables shall thereafter be elected in said townships of Canton and Plain."

It is therefore my opinion that the General Assembly of Ohio in passing Amended Senate Bill 158 in establishing the Municipal Court for the city of Canton and the townships of Canton and Plain in the county of Stark, clearly thereby abolished the office of justice of the peace as mentioned in your letter, and that said justices of the peace may not legally continue in office after January 1, 1926.

Respectfully,

C. C. CRABBE,

Attorney General.