

1895.

COURT OF APPEALS DISTRICTS—POWER TO ALTER NUMBER AND BOUNDARIES OF SAID DISTRICTS VESTED IN GENERAL ASSEMBLY—CONSTITUTIONALITY OF HOUSE BILL NO. 117 (109 O. L. 88) PASSED UPON.

1. *The power to alter the number and boundaries of the appellate court districts of the state, is expressly vested in the General Assembly by section 6, Article IV, Ohio Constitution.*

2. *Legislation altering the number and boundaries of the appellate court districts of the state, may be enacted with the concurring votes of a majority of all the members elected to each house of the General Assembly. Section 9, Article II, Ohio constitution.*

3. *In the exercise of the power vested in the General Assembly by section 6, Article IV, Ohio constitution, to alter the number and boundaries of the appellate court districts of the state, provision may be made that one of the judges residing in that portion of the territory included in the newly established district shall serve therein as one of the three judges until the expiration of the term for which he was elected; and merely changing the number and boundary of the district in and for which he was elected to office, does not abridge his term of office.*

COLUMBUS, OHIO, March 7, 1921.

HON. F. E. WHITTEMORE, *President Pro Tem, Ohio Senate, Columbus, Ohio.*

DEAR SIR:—Your letter of March 2, 1921, relative to House Bill No. 117, and inquiring specifically, first, as to the number of votes necessary to its enactment into law; and, second, whether it abridges the term of any judge in office, was duly received.

The purpose of House Bill No. 117, in its present form, is to divide the state into nine judicial courts of appeals districts. This is to be accomplished by altering the boundary of the present eighth district, which is composed of Cuyahoga, Summit, Medina and Lorain counties, and placing the three latter counties in the new ninth, leaving Cuyahoga county alone to constitute the eighth district.

The bill also makes provision for three judges of the new ninth district, one of whom is to be one of the judges of the present eighth district, who is to serve until the expiration of his present term of office, and the other two are to be appointed by the governor to serve until the election and qualification of their successors,—such election to be had at the general election in 1922. A new judge for the eighth district, to take the place of the one assigned or transferred to the ninth, is also to be appointed by the governor, to serve until the election of his successor at the same general election, etc.

1. *Authority of General Assembly to alter number of appellate districts and their respective boundaries.*

At the present time the state is divided into eight appellate districts, each co-extensive in territory with what were formerly known as the judicial circuits, and in each of which is a court of appeals consisting of three judges. This is by reason of section 6, Article IV, Ohio constitution, which, among other things, provides that "The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which shall be a court of appeals consisting of three judges, and until altered by law the circuits in which the circuit courts are

now held shall constitute the appellate district aforesaid." See also section 14427 G. C., dividing the state into eight judicial circuits and fixing their respective boundaries.

House Bill No. 117 does not undertake to establish a court of appeals. The constitution has done that. See sections 1 and 6, Article IV, Ohio constitution. What the bill purports to do is to alter the number of appellate districts by increasing the number from eight to nine, and this is to be accomplished, as already stated, by taking three counties from the present eighth and placing them in a the new ninth district, leaving one county, Cuyahoga, to constitute the eighth district. The authority of the General Assembly to do this is expressly conferred upon that body by section 6, Article IV, Ohio constitution, which relates to appellate districts, in the following language: "Laws may be passed * * * to alter the number of districts or the boundaries thereof", etc. See also the first sentence of the same section and article, *supra*, which recognizes the existence of such authority.

2. *Number of votes necessary to alter the number and boundaries of appellate districts.*

Having seen that the constitution authorizes the altering *by law* of the number and boundaries of the appellate districts, we come now to the specific question involving the number of votes necessary to enact such legislation. While perhaps unnecessary, it may not be improper at this point to mention what is universally understood, and necessarily involved in what has just been said, that the legislative or law making power of the state is vested in the General Assembly by the constitution, subject, of course, to the initiative and referendum provisions thereof and the veto power of the governor. See sections 1 and 16, Article II, Ohio constitution.

The same instrument, in section 9, Article II, also prescribes the general rule applicable and to be followed by the General Assembly in the exercise of the legislative power, in the following language: "No law shall be passed in either house without the concurrence of a majority of all the members elected thereto." This rule applies to all legislation, unless otherwise expressly provided. Exceptions to the rule may be found in section 1d, Article II, relating to emergency laws; in section 15, Article IV, relating to laws increasing or diminishing the number of supreme court and common pleas judges, and establishing courts inferior to courts of appeals other than common pleas and probate courts (see section 1, Article IV); and in section 29, Article II, relating to the payment of certain claims, etc.—all of which require that legislation of the character indicated shall receive the votes of two-thirds of the members elected to each house.

Since House Bill No. 117 does not fall within the class or character of legislation covered by the foregoing exceptions, and the constitution has prescribed no special rule governing the number of votes necessary to alter the number of appellate districts and their respective boundaries, you are advised that the general or majority vote rule found in section 9, Article II, Ohio constitution, *supra*, will apply to the bill in its present form.

3. *Authority to transfer judge to new district; term of office of such judge not abridged.*

The provisions of section 6, Article IV, Ohio constitution, which expressly confer upon the General Assembly the power and authority to alter the number and boundaries of appellate districts, coupled and followed with the further provision thereof that "Each judge shall be competent to exercise judicial powers in

any appellate district of the state," in my opinion warrants the General Assembly, in the exercise of the power and authority expressly conferred, in transferring a judge from the old to the new district, such as is contemplated by House Bill No. 117. *A fortiori* is this true when the constitution contains no provision clearly forbidding such transfer.

The only constitutional limitation on the power conferred upon the General Assembly in this connection is contained in the further provision of section 6, Article IV, that "no such change shall abridge the term of any judge then in office." House Bill No. 117 recognizes this constitutional limitation on the legislative power by expressly providing therein that the judge of the present eighth district who is transferred to the new ninth district "shall serve the balance of his term as such judge as a member of the ninth court of appeals."

You are therefore advised that the General Assembly in the exercise of its power to alter the number and boundaries of appellate districts, may transfer one of the judges to the new district, as provided for in House Bill No. 117, and that the bill in its present form does not abridge the term of office of such judge.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1896.

APPROVAL OF SYNOPSIS OF PROPOSED AMENDMENT TO OHIO
CONSTITUTION RELATIVE TO MUNICIPAL CORPORATIONS
TAKING OVER FOR PUBLIC USE ANY BUILDING, FACTORY, ETC.

COLUMBUS, OHIO, March 8, 1921.

MR. JOSEPH W. SHARTS, *Attorney at Law, Dayton, Ohio.*

DEAR SIR:—Your letter of March 3, 1921, enclosing proposed synopsis of the proposed amendment to the Ohio constitution to be designated "Section 1b of Article I," was duly received, and I am returning herewith my certificate as provided for in section 5175-29e of the General Code, to-wit:

The contents and purpose of the proposed amendment are as follows:

Any municipality may by ordinance declaring a public exigency to exist by reason of widespread unemployment take for public use immediately and without its action being subject to referendum, any building, factory, machinery, power plant, or other means of production, including land, within the limits of said municipality, which by said ordinance is declared to be idle or to be employed for a private use detrimental to the public welfare; and such municipality may thereafter make such use of such property so taken as it may by ordinance declare to be necessary for the public welfare during such public exigency, including the establishment of co-operative industries, and without interference by the process of any court. Such property may thereafter be restored to private ownership by an ordinance declaring such public exigency to have ceased. Compensation may thereafter be made to the owner, if taken for only temporary public use, as a rental based upon the physical valuation of such property; and if the municipality shall by ordinance declare such property to be permanently needed for public use, compensation therefor may at