

OPINION NO. 67-034**Syllabus:**

A probate judge may finish business commenced by him prior to his election provided it is not connected with his official duty.

To: George E. Martin, Portage County Pros. Atty., Ravenna, Ohio
By: William B. Saxbe, Attorney General, April 13, 1967

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

"May a person who has just been elected Probate Judge of Portage County and takes office in February, appear as Trial Counsel in the Court of Common Pleas for the purpose of representing clients with reference to matters filed prior to his election as Probate Judge."

As you pointed out in your request letter the General Assembly has provided in Section 2101.41, Revised Code, that no probate judge or his deputy clerk shall practice law with the exception of business commenced prior to his election. Section 2101.41, supra, reads in pertinent part as follows:

"No probate judge or his deputy clerk shall practice law or be associated with another as partner in the practice of law in a court or tribunal of this state, or prepare a petition or answer, or make out an account required for the settlement of an estate committed to the care or management of another, or appear as attorney before a justice of the peace, court, or judicial tribunal. Whoever violates this section shall forfeit his office.

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"This section does not prevent a probate judge or deputy clerk from finishing business commenced by him prior to his election or appointment provided it is not connected with his official duty."

The exception provided for in Section 2101.41, supra, would be dispositive of the question if it were not for the general rule for judges in Section 4705.01, Revised Code. That section reads in pertinent part as follows:

"No judge of any court of record in this state shall engage in the practice of law during his term of office, either by appearing in court, by acting as advisory or consulting counsel for attorneys or others, by accepting employment or acting as an attorney, solicitor, collector, or legal advisor for any bank, corporation, or loan or trust company, or by otherwise engaging in the practice of law in this state, in or out of the courts, except as provided in section 1901.11 of the Revised Code.

"A judge may complete any business undertaken by him in the United States district court, the United States circuit court of

appeals, or the supreme court of the United States prior to his election as judge."

Section 1901.11, Revised Code, reads in pertinent part:

"Judges designated as part-time judges by section 1901.08 of the Revised Code shall receive as compensation not less than four thousand dollars per annum, as the legislative authority prescribes, and such judges shall be disqualified from the practice of law only as to matters pending or originating in the courts in which they serve during their terms of office."

In Opinion No. 3291, Opinions of the Attorney General for 1962, page 736, my predecessor in office considered the provisions of Section 4705.01, *supra*, as they applied to the exception contained in Section 1907.081, Revised Code, for judges of the county courts. The then Attorney General ruled that the specific provisions of Section 1907.081, *supra*, allowing a county court judge to practice law in matters not pending or originating in his county court should be read as an exception to the general provisions of Section 4705.01, *supra*. The holding of Opinion No. 3291, *supra*, was based on the rule in Fisher Bros. Co. v. Bowers, 166 Ohio St. 191, where Justice Stewart stated at page 196:

"We have held so many times that it has become axiomatic that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter. State, ex rel. Steller et al, Trustees, v. Zangerle, Aud., 100 Ohio St., 414, 126 N.E., 413; State, ex rel. Elliott Co., v. Connor, Supt., 123 Ohio St., 310, 175 N.E., 200; Acme Engineering Co. v. Jones, Admr., 150 Ohio St., 423, 83 N.E. (2d), 202; Johnson v. United Enterprises, Inc., ante, 149."

It is therefore my opinion and you are accordingly advised that a probate judge may finish business commenced by him prior to his election provided it is not connected with his official duty.