

OPINION NO. 66-029**Syllabus:**

1. Regardless of reductions in population in a county court district the office of one of several county court judges is not automatically abolished by the derogation of a portion of the county court district's area of jurisdiction.

2. The court of common pleas should make a determination whether it is necessary to reduce the number of county court judges under the criterion established in section 1907.041, Revised Code.

3. If it is determined that the number of county court judges should not be reduced the Governor may fill any vacancy which exists.

To: H. William Bowers, Warren County Pros. Atty., Lebanon, Ohio
By: William B. Saxbe, Attorney General, February 1, 1966

Your request for my opinion reads as follows:

"Warren County has a County Court served by two Judges pursuant to Section 1907.041 (B), Ohio Revised Code.

"The State Legislature recently created a Municipal Court for the Village of Mason, Ohio, in Warren County, having a jurisdiction throughout Deerfield Township. This creation of a Municipal Court, pre-empting part of the County Court jurisdiction, is effective January 1, 1966.

"One of the incumbent County Court Judges, who was elected to a four year term as County Court Judge commencing January 1, 1965, has been elected this past November as Judge of the

Mason Municipal Court, and since he will no longer reside in the County Court jurisdiction, he will have both forfeited and vacated his office as County Court Judge on January 1, 1966.

"Further, based on the 1960 Federal Decennial Census, the removal of the population of Deerfield Township from the population of the County Court jurisdiction reduces the population below 30,000. However, it should be noted that population increase in the remaining County Court area over the past six years would probably result in a census taken today showing over 30,000 in the remaining County Court district.

"With the foregoing as a background, my questions follow:

"1. May the Governor appoint a Judge to the post which will be vacant January 1, 1966, to serve until the general election in November, 1966, at which time he would run for the two years of the unexpired term, or

"2. Has the office of the second County Court Judge been abolished because of the decrease of population, based on the 1960 census, of the County Court district as of 1960, or

"3. Does it lie within the discretion of the Common Pleas Judge to re-determine how many Judges the County Court shall have when a vacancy occurs as Section 1907.071 seems to indicate in stating 'If a County Court judgeship becomes vacant the Court of Common Pleas may re-determine such areas of jurisdiction by changing the number of Judges for such County Court district, if necessary, in accordance with population standards set forth in Section 1907.041 of the Revised Code,' and doesn't this section conflict with Section 1907.041, and in effect, attempt to delegate a legislative function to a judicial officer which may be unconstitutional?"

Section 1907.071, Revised Code, reads in part:

* * * * *

"Whenever the territory of a county court district is reduced by the territorial expansion of municipal court jurisdiction, the court of common pleas shall re-determine such areas of separate jurisdiction and, if necessary, re-assign areas so as to make each area as equal in population to others in the district as is possible under the altered conditions. If a county court judgeship becomes vacant, the court of common pleas may re-determine such areas of jurisdiction by

changing the number of judges for such county court district, if necessary, in accordance with population standards set forth in section 1907.041 1907.04.1 of the Revised Code."

In commenting on this provision I said in my opinion No. 479 for 1963:

* * * * *

"This section sets forth explicitly the procedure to be followed in your situation. The only provision contained therein regarding changing of the number of judges arises where a county court judgeship becomes vacant. When the county court district is diminished by territorial expansion of municipal court jurisdiction, the only action authorized is a redetermination and re-assignment of the areas of separate jurisdiction.

"In view of the above statutory authority, I will now turn to your specific inquiries.

"1. The answer to your first question must be in the negative. There is no provision in the Revised Code which effects the abolition of a county court judgeship when his area of jurisdiction is diminished by the expansion or establishment of a municipal court. On the contrary, Section 1907.071, supra, provides that the common pleas court shall redetermine the areas of separate jurisdiction of the existing county courts, when this occurs."

Section 1907.041, Revised Code, provides in pertinent part:

"Each county court district shall have county court judges as follows:

"(A) Districts not exceeding thirty thousand population, one judge;

"(B) Districts exceeding thirty thousand but not exceeding sixty thousand population, two judges;"

* * * * *

"Vacancies caused by the death, resignation, forfeiture, or removal from office of a judge shall be filled in accordance with section 107.08 of the Revised Code except as provided in section 1907.071 1907.07.1 of the Revised Code."

I agree with your analysis of the foregoing and it is

my opinion that:

1. Regardless of reductions in population in a county court district the office of one of several county court judges is not automatically abolished by the derogation of a portion of the county court district's area of jurisdiction.

2. The court of common pleas should make a determination whether it is necessary to reduce the number of county court judges under the criterion established in section 1907.041, Revised Code.

3. If it is determined that the number of county court judges should not be reduced the Governor may fill any vacancy which exists.