

**OPINION NO. 88-024****Syllabus:**

1. An acting judge of a county court, appointed in accordance with R.C. 1907.14, may issue a search warrant pursuant to R.C. 2933.21.
2. A person appointed as the acting judge of a county court pursuant to R.C. 1907.14 need not provide a bond.
3. A person appointed as acting judge of a county court pursuant to R.C. 1907.14 may be appointed to serve in that capacity only during the temporary absence or incapacity of the incumbent judge.

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**To: Alan W. Foster, Adams County Prosecuting Attorney, West Union, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 30, 1988**

I have before me your request for my opinion regarding the acting judge of a county court. Specifically, you have raised the following questions:

1. In the absence of both the County Court Judge (not a Municipal Court Judge) and the Common Pleas Judge, does the Acting Judge of County Court have the authority to sign a Search Warrant?
2. Should an Acting Judge of County Court be bonded the same as the duly elected County Court Judge?
3. Upon the appointment of an Acting Judge for County Court by the Judge of the Court of Common Pleas, should this appointment be for the term of the elected Judge or should this appointment be done yearly?

Your first question relates to the authority of an acting judge of a county court, and therefore requires that I examine the powers conferred upon such an acting judge by statute. The authority of an acting judge of a county court is set forth in R.C. 1907.14, which provides in part:

When a judge of a county court is temporarily absent or incapacitated, a substitute having the qualifications required by section 1907.13 of the Revised Code shall be appointed by the court of common pleas of the county to serve during the absence or incapacity of the incumbent. *Such appointee shall have the jurisdiction and powers conferred upon the judge of the county court and shall be styled "acting judge."* (Emphasis added.)

Since an acting judge has the same authority as the incumbent judge, I must determine whether the judge of a county court has the authority to issue a search warrant.

Search warrants to search a house or place are issued pursuant to the authority conferred under R.C. 2933.21. That section provides that "[a] judge of a court of record may, within his jurisdiction, issue warrants to search a house or place." (Emphasis added.) A county court is a court of record. R.C. 1907.01 ("[c]ounty courts are courts of record for all purposes of law"). Therefore, in answer to your first question, I conclude that an acting judge of a county court, appointed in accordance with R.C. 1907.14, may issue a search warrant pursuant to R.C. 2933.21.

Turning to your second question, I note that R.C. 1907.14 requires that a person elected as judge of a county court give a bond. The specific language of R.C. 1907.14 is as follows:

Every person who is elected judge of a county court shall forthwith take and subscribe the oath of office before the clerk or a judge of the court of common pleas or before a judge of the county court to which he is elected. A record of that oath shall be made by the administering officer and shall be filed with the clerk of the court of common pleas.

Within ten days after taking the oath of office, each county court judge, before he is authorized to discharge the duties of his office, shall give a bond to this state in the amount of five thousand dollars, with either one corporate surety or two personal sureties, conditioned upon the faithful performance of the duties of his office. The bond shall be approved by a judge of the court of common pleas in the county and deposited with the clerk of the court of common pleas.

While this section requires that a person elected judge give a bond upon taking an oath of office, there is no similar requirement for a person appointed as acting judge pursuant to that portion of the statute authorizing appointment of an acting judge. That portion provides specifically:

When a judge of a county court is temporarily absent or incapacitated, a substitute having the qualifications required by section 1907.13 of the Revised Code shall be appointed by the court of common pleas of the county to serve during the absence or incapacity of the incumbent....During his term of service, the compensation of an acting judge shall be in the same amount and payable in the same manner as the compensation paid to the incumbent judge during the same period.

Thus, while this paragraph specifies the qualifications that the person appointed as acting judge must have, and provides for compensation of an acting judge, it is silent on the question of whether a bond is required. That the General Assembly specifically imposed a requirement for a bond upon a person elected judge, but did not expressly impose a similar requirement for an acting judge leads me to conclude that a person appointed as the acting judge of a county court, pursuant to R.C. 1907.14, need not provide a bond. See generally *State ex rel. Alden E. Stilson &*

*Assoc. v. Ferguson*, 154 Ohio St. 139, 93 N.E.2d 688 (1950) (citing the maxim of construction *expressio unius est exclusio alterius* and concluding that the specification of one thing in a statute implies the exclusion of another); *Lake Shore Electric Ry. Co. v. PUCO*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (if the General Assembly had intended a certain purpose or requirement "it would not have been difficult to find language which would express that purpose," having used such language in other connections).

Your final question asks about the duration of an appointment of an acting judge of a county court under R.C. 1907.14. The express language of that section limits the duration of the appointment of an acting judge. The statute provides that "[w]hen a judge of a county court is temporarily absent or incapacitated, a substitute having the qualifications required by section 1907.13 of the Revised Code shall be appointed by the court of common pleas of the county to serve *during the absence or incapacity of the incumbent....*" (Emphasis added.) It is a recognized axiom of statutory construction that where the language of a statute is clear and unambiguous there is no need to resort to other rules of statutory interpretation. *See generally State ex rel. Celebrezze v. Allen County Board of County Commissioners*, 32 Ohio St. 3d 24, 512 N.E.2d 332 (1987). Accordingly, I conclude that a person appointed as acting judge of a county court pursuant to R.C. 1907.14 may be appointed to serve only during the temporary absence or incapacity of the incumbent judge.

Based on the foregoing, it is my opinion, and you are so advised, that:

1. An acting judge of a county court, appointed in accordance with R.C. 1907.14, may issue a search warrant pursuant to R.C. 2933.21.
2. A person appointed as the acting judge of a county court pursuant to R.C. 1907.14 need not provide a bond.
3. A person appointed as acting judge of a county court pursuant to R.C. 1907.14 may be appointed to serve in that capacity only during the temporary absence or incapacity of the incumbent judge.