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SHORT HAND REPORTERS — COURTS OF COMMON PLEAS — SECTIONS 1546, 1547 G.C. — AUTHORIZE APPOINTMENT ONE OFFICIAL SHORT HAND REPORTER — COUNTIES HAVING ONE COMMON PLEAS JUDGE — NO AUTHORITY TO APPOINT ADDITIONAL REPORTER ON FULL OR PART-TIME BASIS.

SYLLABUS:

Sections 1546 and 1547, General Code, which provide for the appointment of shorthand reporters for courts of common pleas, authorize the appointment of only one official shorthand reporter in counties having one common pleas judge and, consequently, the appointment of additional shorthand reporters in such counties on either full or part-time basis is unauthorized by law.

Columbus, Ohio, June 4, 1942.

Hon. Frank W. Springer, Prosecuting Attorney,
Lisbon, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Columbiana County has one Common Pleas Judge and has, to the best of my knowledge, never had more than one. However, for quite a number of years there has been an Official Shorthand Reporter of such Court and one Assistant Shorthand Reporter. It is claimed that the need for the Assistant Shorthand Reporter is due to the fact that Columbiana County has more litigation than one Court can properly handle but does not have a sufficient amount of court work to require the need of an additional Common Pleas Judge. As a result of this con-

dition, visiting judges are assigned to the County quite frequently during the year and the duties of the Assistant Shorthand Reporter have been to report cases in the Court of the visiting judge, to act as Reporter for the Grand Juries, and to be at the call of the Court of Appeals or visiting Boards when they sit in our County. The Assistant Reporter also relieves the Official Shorthand Reporter when the work demands it.

The question as now submitted to me by the Board of County Commissioners of Columbiana County, Ohio, sitting in their capacity as the taxing authorities for the County, is whether or not they have the right to make an appropriation for more than one stenographer or reporter for the Common Pleas Court. In this connection they cite General Code Sections 1546 and 1547, which read as follows:

Section No. 1546:

'Appointment of official shorthand reporter; term; oath. The court of common pleas of each county shall appoint a stenographic reporter as official shorthand reporter of such court, who shall hold the appointment for a term not exceeding three years from the date thereof, and until a successor is appointed and qualified, unless removed by the court, after a good cause shown for neglect of duty, misconduct in office, or incompetency. Such official shorthand reporter shall take an oath to faithfully and impartially discharge the duties of such position.'

Section No. 1547:

'Additional shorthand reporters. In counties having more than one common pleas judge, the court shall appoint as many additional shorthand reporters, as assistants, as will bring the total to a number not less than the number of common pleas judges in such county, in no case to exceed twelve. Such additional reporters shall take a like oath, serve for such time as may be designated by the court, not exceeding three years under one appointment, and may be paid at the same rate and in the same manner as the official shorthand reporter. Such shorthand reporters when so appointed shall be ex-officio shorthand reporters of the court of common pleas in such county.'

In reading the facts of law relative to court appointees, I fail to find any section which provides for the employment of a shorthand reporter on a temporary basis. Obviously, however, the work is beyond the capacity of one Official Shorthand Reporter under the circumstances as given above. It would appear that if the Court has the authority to employ a stenographer for part time work, he would have the authority to employ an additional or Assistant Reporter other than the sections cited above.

Under Section 1547 as it read prior to August 18th, 1939,

the Court could appoint as many additional shorthand reporters as were necessary, but in view of the reading of the opening sentence in Section 1547, as amended, it appears that the Court can not appoint an Assistant or additional Shorthand Reporter unless there is more than one Common Pleas Judge in the county. Specifically, I request your official opinion on the following questions:

1. Is there any authority for a Common Pleas Judge to appoint more than one Shorthand Reporter in a county where there is only one Common Pleas Judge?

2. If there is not authority to appoint more than one Shorthand Reporter for the purposes of the Common Pleas Court in a county where there is only one Common Pleas Judge, is there authority for appointing a Shorthand Reporter on a part time basis?"

Before Sections 1546 and 1547, General Code, were amended (118 O.L. 393) to read as set forth in your letter, these sections read as follows:

Section 1546:

"When in its opinion the business requires it, the court of common pleas of a county may appoint a stenographic reporter as official shorthand reporter of such court, who shall hold the appointment for a term not exceeding three years from the date thereof, and until a successor is appointed and qualified, unless removed by the court, after a good cause shown, for neglect of duty, misconduct in office, or incompetency. Such official shorthand reporter shall take an oath to faithfully and impartially discharge the duties of such position."

Section 1547:

"When the services of one or more additional shorthand reporters are necessary in a county, the court may appoint assistant shorthand reporters, in no case to exceed ten, who shall take a like oath, serve for such time as their services may be required by the court, not exceeding three years under one appointment, and may be paid at the same rate and in the same manner as the official shorthand reporter. Such shorthand reporters when so appointed shall be ex-officio shorthand reporters of the insolvent and superior courts, if any, in such county."

It will be noted that before the amendments, the appointment of an official shorthand reporter and extra reporters was discretionary with the court and said sections made no reference to the number of judges in a county as affecting the court's right or duty of appointment, or the number of appointments up to ten. To this effect was the case of State, ex

rel. *Dworken v. Court of Common Pleas of Cuyahoga County, et al.*, 131 O.S. 23, wherein the Supreme Court of Ohio stated:

“Upon a careful analysis of Sections 1546 and 1547, General Code, we can find nothing of a mandatory nature in their provisions. At most, they vest discretionary power in a Court of Common Pleas to appoint an ‘official shorthand reporter of such court’ and assistants, not to exceed ten, ‘when in its opinion the business requires it.’ From the entire context of these sections, we are convinced that the word ‘may’ appearing therein was employed merely in a permissive sense. This conclusion is fortified by the use of the words ‘When in its opinion the business requires it,’ etc., immediately preceding ‘may’ in Section 1546.”

The *Dworken* case was decided in 1936 and Sections 1546 and 1547, General Code, were amended in 1939 to read as quoted in your letter. Under Section 1546, General Code, as amended, the appointment of an official shorthand reporter for each Court of Common Pleas is mandatory. Also, in mandatory terms, amended Section 1547, General Code, requires the appointment of as many additional reporters, not to exceed twelve, as will bring the total number to not less than the number of common pleas judges, but said additional reporters shall be appointed only “in counties having more than one common pleas judge,” under the provisions of said section.

It is not the province of the courts nor of this office to attempt to ascertain the reasons for legislation nor to consider the wisdom thereof when the language adopted is plain and unambiguous and leaves no room for interpretation. In Volume 37 O.Jur. 514, supported by numerous court decisions, is the following text:

“Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to the rules of statutory interpretation. To interpret what is already plain is not interpretation but legislation.”

The court, in appointing official shorthand reporters, is acting as an officer or agent of the county. In *Re Grace E. Etter*, 12 O.App. 165. In this capacity it is limited by the familiar rule that a public officer has only such powers as are expressly granted by statute and such as are necessarily implied from those granted. 32 O.Jur. 934. Especially where the exercise of a power involves the expenditure of public funds the grant of authority must be clearly found in the law. *State, ex rel. v. Pierce*, 96 O.S. 44 and *State, ex rel. v. Maharry*, 97 O.S. 272.

I find no authority in Sections 1546 and 1547, General Code, or elsewhere, for the appointment by a court in a county having but one common pleas judge of more than one official shorthand reporter and I must, therefore, answer your first inquiry in the negative.

The reasons for my answer to your first question are likewise applicable to your second inquiry and it is, therefore, my opinion that no authority exists for the appointment of an additional shorthand reporter on a part time basis in a county having only one common pleas judge.

Respectfully,

THOMAS J. HERBERT
Attorney General.