

OPINION NO. 70-171

Syllabus:

All judges of the common pleas court are entitled to participate when selecting the presiding judge.

To: Lawrence S. Huffman, Allen County Pros. Atty., Lima, Ohio
By: Paul W. Brown, Attorney General, December 23, 1970

I have before me your request for an opinion which reads as follows:

"Is a Judge of the Probate Division of the Court of Common Pleas entitled to participate in the selection of the Presiding Judge of the Common Pleas Court pursuant to the provisions of Article IV, Section 4 (A) of the Constitution of Ohio?"

The Constitution of Ohio, Article IV, Section 4, as amended, reads as follows:

"(A) There shall be a court of common pleas in each county of the state. Any judge of a court of common pleas may temporarily hold court in any county. Each county shall have at least one resident judge and such additional resident judges as may be provided by law. In counties having more than one judge, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the supreme court.

"(B) The courts of common pleas shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

"(C) Unless otherwise provided by law, there shall be a probate division of the courts of common pleas, and judges shall be elected specifically to such probate division and shall be empowered to employ and control the clerks, employees, deputies and referees of such probate division of the common pleas courts." (Emphasis added.)

The distinction between the probate court and the common pleas court which existed prior to May 7, 1968 is now abolished. There is now but one court in each county which is the common pleas court. Although a judge of the probate division is elected separately, this judge is also a judge of the common pleas

court and should be entitled to vote in determining who the presiding judge shall be.

Thus, it is my opinion and you are hereby advised that all judges of the common pleas court are entitled to participate when selecting the presiding judge.