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COUNTY COURT—NO PROVISION FOR THE OFFICE OF CLERK—COUNTY JUDGE TO SERVE AS CLERK—CHAPTER 1907. RC—HB 914, HB 937, 102nd GA.

SYLLABUS:

Neither the provisions of Chapter 1907., nor of Chapter 1909., Revised Code, as enacted in House Bill No. 914 and House Bill No. 937, respectively, 102nd General Assembly, make provision for the office of clerk of the county courts created by such enactments, nor is there any authority for the designation of a deputy sheriff, an assistant prosecuting attorney, or other elected official, to assume any of the duties and responsibilities specifically given to the county judge.

Columbus, Ohio, October 11, 1957

Hon. Forrest Sidener, Jr., Prosecuting Attorney  
Madison County, London, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“I am writing to you relative to Amended House Bill number 914 pertaining to the establishment of County Courts in Ohio.

“In reading over the Bill it appears that the legislature has made no provision for a clerk of said County Court.

“I am in receipt of a letter from the Clerk of the Madison County Commissioners relative to the aforementioned subject wherein I am asked to obtain an Attorney General's Opinion on the following possibilities for a clerk :

“(1) May a Deputy Sheriff be assigned to the Court as a Clerk since the Sheriff is indicated as a ministerial officer under Section 1907.511.

“(2) Would it be possible for a deputy from some other elected official's office to be assigned to the court.

“In addition thereto I would like your opinion as regards the following proposition, to-wit :

“In view of the provisions of Chapter 309 and especially Sections 309.08, and 309.12, of the Revised Code relating to the powers and duties of the Prosecuting Attorney and due to the volume of cases contemplated in the County Court of Madison County, if an assistant to the Prosecuting Attorney was appointed to present and otherwise assist and help dispose of cases in the County Court and further that a clerk or stenographer was also appointed to assist such assistant to the Prosecutor ; could such assistant and clerk or stenographer or either render services to such County Judge, which technically might be considered the obligations of such Judge to perform, such as accounting for and receipt of monies, indexing and docketing of cases, filing of original papers, etc., which in a Court of Record would be performed by a clerk of such Court ?

In examining the provisions of the aforementioned act and Amended House Bill No. 937, 102nd General Assembly, I find no reference to the office of clerk of the county courts, nor any authority permitting county judges to appoint clerks to assist them in the administration of their proper duties.

On the contrary, the following newly enacted sections of the Revised Code as contained in Amended House Bill No. 937, specifically charge the county judge with the performance of duties ordinarily considered the function of the clerk of courts :

“Sec. 1919.01. An action for replevin of property is brought by filing in the office of a *judge of a county court* an affidavit,  
\* \* \*.”

“Sec. 1923.05. The summons shall not issue in an action under sections 1923.01 to 1923.14, inclusive, of the Revised Code, until the plaintiff filed his complaint in writing with the *judge of the county court*, \* \* \*.”

“Sec. 1909.02. *County court judges*, within and co-extensive with their respective counties, have jurisdiction and authority to:  
\* \* \*

“(H) Issue execution on judgments rendered by such  
*judges.*” (Emphasis added.)

In view of the above examples, it would seem clear that the General Assembly intended that no clerk be appointed to this court, and that the magistrate himself perform such duties, as did the Justice of Peace, the court which the county judge now replaces.

Notice also that new Section 311.04, Revised Code, provides in part that :

“\* \* \* No judge of a county court or mayor shall be appointed a deputy.” (sheriff)

This would seem to indicate an intent of the legislature that the function of deputy sheriff and county court judge should not be combined in the same person; therefore, I would conclude that a deputy sheriff may not perform the statutory duties of such judge.

In the absence of authority to the contrary, it would seem that no elected official or his deputy may perform the duties of an office for which not he but another was chosen by the electors to hold. Section 1907.061, Revised Code, requires that every county judge shall give bond in the amount of five thousand dollars conditioned upon faithful performance. Certainly such duties as receipt of and accounting for monies, docketing of cases, and filing of original papers are prime considerations under such a provision, and should not be thought of as delegable powers or responsibilities.

In conclusion, it is my opinion that neither the provisions of Chapter 1907., nor of Chapter 1909., Revised Code, as enacted in House Bill No. 914 and House Bill No. 937, respectively, 102nd General Assembly, make provision for the office of clerk of the county courts created by such enactments, nor is there any authority for the designation of a deputy sheriff, an assistant prosecuting attorney, or other elected official, to assume any of the duties and responsibilities specifically given to the county judge.

Respectfully,

WILLIAM SAXBE

Attorney General