

OPINION NO. 1017**Syllabus:**

1. Under Section 1901.10, Revised Code, an additional judge may be designated for a municipal court when the volume of pending cases in the municipal court necessitates an additional judge.

2. The authority to designate an additional judge under Section 1901.10, Revised Code, is in the chief justice of the supreme court upon written request of the judge or presiding judge of the municipal court. If the chief justice reports, in writing, that no municipal judge is available to serve by designation, the judges of the municipal court may appoint a substitute judge.

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To: Rex Larson, Richland County Pros. Atty., Mansfield, Ohio
By: William B. Saxbe, Attorney General, May 1, 1964

I am in receipt of your request for my opinion on the following questions:

"In what situation may an Acting Judge be appointed to serve on a Municipal Court where there are two or more duly elected and qualified Judges of such Court? By whom?"

As you point out in your letter of request, the questions appear to be disposed of by the terms of Section 1901.10, Revised Code, which are in material part as follows:

"When a judge of a municipal court having only one judge is temporarily absent or incapacitated, the judge may appoint a substitute who has the qualifications required by section 1901.06, of the Revised Code, and if such judge is unable to make the appointment the chief executive shall appoint a substitute. Such appointee shall serve during the absence or incapacity of the incumbent, shall have the jurisdiction and powers conferred

upon the judge of the municipal court, and shall be styled 'acting judge.' He shall sign all process and records during the time he is serving, and shall perform all acts pertaining to the office, except that of removal and appointment of officers of the court. All courts shall take judicial notice of the selection and powers of the acting judge, who shall be paid in the same manner and at the same rate as the incumbent judge. When the volume of cases pending in any municipal court necessitates an additional judge, the chief justice of the supreme court upon written request of the judge, presiding judge, or chief justice may designate a judge of another municipal court to serve for such period of time as he may prescribe. In addition to the annual salary provided for in section 1901.11, of the Revised Code, each judge while holding court outside his territory on the designation of the chief justice of the supreme court, shall receive fifteen dollars for each day of such assignment and his actual and necessary expenses to be paid from the city treasury. If a request is made to designate a judge of another municipal court and the chief justice of the supreme court reports, in writing, that no municipal judge is available to serve by designation, the judges of said court may appoint a substitute, as provided in this section, who may serve for such period of time as is prescribed by the chief justice of the supreme court, and who shall be paid in the same manner and at the same rate as the incumbent judges."

These provisions are free from ambiguity and it follows that an additional judge may be appointed to a municipal court when the volume of pending cases necessitates an additional judge. I am aware of no other authority for the appointment of an additional judge and must conclude, accordingly, that this is the single instance in which such an appointment may be made.

You have secondly asked by whom such appointment is to be made. Section 1901.10, supra, requires that a written request for an additional municipal judge be made of the chief justice of the supreme court and authorizes the chief justice to designate a judge of another municipal court to serve as an additional judge of the court from which the request is received. If the chief justice reports, in writing, that no municipal judge is available to serve, the judges of the municipal court making the request are authorized to appoint a substitute judge who need not be an existing judge but who must be a person with the qualifications required by Section 1901.06, Revised Code.

It should be borne in mind that the designation of an additional judge or a substitute judge under Section 1901.10, supra, is not to fill a vacancy. I point this out to avoid any confusion over the effect of Sections 10 and 13, Article IV, Constitution of Ohio, which provide, in substance and respectively, that all judges shall be elected and that any vacancy shall be filled by appointment of the governor until a successor is elected. These sections do not apply to the temporary sub-

stitution of an acting judge for a duly elected judge. State v. Portenan, 67 Ohio App. 248; Brown v. Toledo, 7 N.P. 435, 5 O.D. 210. And, in my opinion, they do not apply to the designation of an additional judge under Section 1901.10, supra, on a temporary basis where the volume of work necessitates an additional judge.

In specific answer to your questions, it is my opinion and you are advised that:

1. Under Section 1901.10, Revised Code, an additional judge may be designated for a municipal court when the volume of pending cases in the municipal court necessitates an additional judge.

2. The authority to designate an additional judge under Section 1901.10, Revised Code, is in the chief justice of the supreme court upon written request of the judge or presiding judge of the municipal court. If the chief justice reports, in writing, that no municipal judge is available to serve by designation, the judges of the municipal court may appoint a substitute judge.