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JUSTICE OF PEACE—NO POWER TO APPOINT HIMSELF TO OFFICE OF TOWNSHIP TRUSTEE—SECTION 503.24, R. C.

SYLLABUS:

A justice of the peace having the power to appoint under Section 503.24, Revised Code, may not appoint himself to the office of township trustee.

Columbus, Ohio, November 20, 1956

Hon. J. L. MacDonald, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

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

“I have been requested by a board of township trustees of this County to ask for your opinion on the following question: Section 503.24 of the Revised Code of Ohio provides for the filling of a vacancy in a board of township trustees by appointment, made by a Justice of the Peace in such township.

“In the present case under question, there is only one Justice of the Peace in the township and the question is whether or not under the provisions of the above Section, he can appoint himself to fill the vacancy in the board of township trustees.”

For the purposes of this opinion, I shall not explore the questions which arise concerning the incompatibility between the offices of justice of the peace and township trustee, on the assumption that the justice concerned intends to resign his office as such upon entering into the office of trustee.

Section 503.24, Revised Code, reads in part as follows:

“If, by reason of the nonacceptance, death, or removal of a person chosen to an office in any township except trustee, at the regular election, or if there is a vacancy from any other cause, the board of township trustees shall appoint a person having the qualifications of an elector to fill such vacancy for the unexpired term.

“If a township is without a board or there is a vacancy in such board, the justice of the peace of such township holding the

oldest commission, or in case the commission of two or more of such justices bear even date, the justice oldest in years, shall appoint suitable persons, having the qualifications of electors in the township, to fill such vacancies for the unexpired term."

42 American Jurisprudence, 955, states in Section 97 that:

"A public office is a public trust, and persons to be appointed thereto should be selected solely with a view to the public welfare. * * *"

"An officer intrusted with the power of appointment should exercise it with disinterested skill and in a manner primarily for the benefit of the public, for it is the policy of the law to secure the utmost freedom from personal interest in such appointments. So, *it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members.*" (Emphasis added.)

In *Hornung v. State*, 116 Ind. 458, 19 N. E. 151, at pages 153-4, the court said concerning a question similar to the one you have posed:

"A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence, and primarily for the benefit of the public. * * * It is the policy of the law to secure the utmost freedom from personal interest or undue influence in the selection of public officers, whether elective or appointive."

The court affirmed the common law proposition that:

"* * * it is contrary to the policy of the law to permit a public officer having an appointing power to use such power as a means of conferring an office upon himself."

Also see *Meglemery v. Weissinger et al.*, 140 Ky. 353, 131 S.W. 40, and *State, ex rel. v. Thompson*, 193 Tenn. 395, 246 S.W. 2d, 59.

A question somewhat similar to the one here involved was considered in *Oliver v. Brill, Treas., et al.*, 14 O. App. 312. In that case the court had before it a situation in which a township trustee had moved and voted for a resolution which relieved him of paying a greater assessment on his own real estate. The court cited and followed the *Hornung v. State* case, cited *supra*, saying at page 319 that although the township trustees had the authority, by statute, to pass a resolution and waive any part of the apportionment costs:

“However, it was not the purpose of the foregoing statute to so far abrogate or change the common-law rule as to permit a public official to use his authority as such to promote his own pecuniary welfare; clearly it applies only in a situation where no financial or material personal advantage is to be gained, because every public official is, in a way, an agent and as such owes his first duty to his constituents and the unselfish discharge of every official obligation * * *.”

Accordingly, it seems clear that a justice of the peace holds a position of public trust and it would violate the judicial rule of public policy pointed out in the authorities cited, to permit him to appoint himself to the office of township trustee.

My specific answer then to your question is that a justice of the peace having the power to appoint under Section 503.24, Revised Code, may not appoint himself to the office of township trustee.

Respectfully,
C. WILLIAM O'NEILL
Attorney General