

2355.

JURISDICTION—CIVIL AND CRIMINAL MATTERS IN COVENTRY AND NORTON TOWNSHIPS—JUSTICES OF PEACE CEASE TO EXERCISE AS SOON AS MUNICIPAL JUDGE OF BARBERTON IS ELECTED AND QUALIFIED—DOCKETS AND FILES MUST BE TURNED OVER TO MUNICIPAL COURT.

SYLLABUS:

By virtue of the act establishing the municipal court (Sections 1579-1124 to 1579-1176, inclusive, General Code) for Barberton, Ohio, the jurisdiction of all justices of peace in Coventry and Norton Townships in all civil and criminal matters ceased as soon as a municipal judge was elected and qualified, irrespective of when the term of such office expired, and such officers must turn over their dockets and files pertaining to civil and criminal matters.

COLUMBUS, OHIO, September 17, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your letter of recent date in which you enclose the letter addressed to you by Hon. George R. Platt, judge of the Municipal Court of Barberton, Ohio, in which he requested your opinion as to whether or not the justice of peace whose term of office for which he was elected expires after the effective date of the act creating a municipal court for the city of Barberton and the townships of Norton and Coventry, Summit County, is required to turn over his dockets and files to the Municipal Court. This question you have referred to me for my opinion.

The act establishing a municipal court in the city of Barberton and the townships of Norton and Coventry, Summit County, has been carried into the General Code as Sections 1579-1124 to 1579-1176, inclusive. Section 1579-1124 provides as follows:

“That there shall be, and hereby is, established in and for the city of Barberton and the townships of Norton and Coventry, Summit County, Ohio, a municipal court, which shall be a court of record and shall be styled, ‘The municipal court of Barberton, Ohio,’ hereinafter designated and referred to as the ‘municipal court.’”

Section 1579-1125 provides in part as follows:

“Said municipal court shall be presided over by one judge, to be designated herein as the ‘municipal judge,’ whose office is hereby created, and whose term of office shall be for a period of four (4) years.”

Section 1579-1129 provides in part as follows:

“The municipal court shall have original civil jurisdiction within the limits of the city of Barberton and Norton and Coventry Townships, in the following cases:

1. All actions and proceedings of which justices of the peace now have or may hereafter be given jurisdiction.”

Section 1579-1135 provides as follows:

“The municipal court shall have jurisdiction of all misdemeanors com-

mitted within the city of Barberton or the townships of Norton and Coventry, and all violations of the city ordinances within the city of Barberton or within the jurisdiction of said court outside of said city, of which police courts in municipalities or justices of the peace now have, or may hereafter be given jurisdiction. In felonies the municipal court shall have the powers which police courts in municipalities and justices of the peace now have, or may hereafter be given.

The municipal court shall have jurisdiction of all bastardy cases and other quasi-criminal actions and proceedings, of which justices of the peace now have or may hereafter be given jurisdiction; and in all such actions the practice, procedure and powers of the court in relation thereto shall be the same as those which are now or may hereafter be possessed by justices of the peace."

It will be noted from a reading of these sections set forth herein that the municipal court of Barberton, Ohio, was given jurisdiction of all cases that a justice of peace has or thereafter may have.

This brings me to a discussion of the application of Section 1711-1 of the General Code, which provides:

"That there be and is hereby established in each of the several townships in the several counties of the State of Ohio, except townships in which a court other than a mayor's court now exists or may hereafter be created having jurisdiction of all cases of which justices of the peace have or may have jurisdiction, the office of justice of the peace.

The jurisdiction, powers and duties of said office, and the number of justices of the peace in each such township shall be the same as was provided by the laws in force on September 3rd, 1912. All laws and parts of laws in force on said date, in any manner regulating such powers and duties, fixing such jurisdiction or pertaining to such office or the incumbents thereof are hereby declared to be and remain in force until specifically amended or repealed, the same as if herein fully re-enacted."

By the provisions of Section 1711-1, General Code, above quoted, the office of justice of peace is established in each of the several townships in the several counties of the state "except townships in which a court other than a mayor's court now exists or may hereafter be created having jurisdiction of all cases of which justices of the peace have or may have jurisdiction." From the provisions of the act providing for the establishment of said municipal court of Barberton, Ohio, it appears that there now exists in Norton and Coventry Townships, Summit County, Ohio, a court other than a mayor's court having jurisdiction of all cases of which justices of the peace have jurisdiction. It has been held by former Attorneys General that the provisions of Section 1711-1 of the General Code have the effect of abolishing the office of justice of peace in any township wherein there is established a municipal court having jurisdiction of all cases which a justice of the peace has or may have jurisdiction. This view is expressed in the opinions of two former Attorneys General. See Opinions of the Attorney General, 1918, Vol. I, p. 302, and Opinions of the Attorney General, 1927, Vol. III, p. 2359. However, in answering your inquiry, I do not deem it necessary to pass upon the question of whether or not the offices of all justices of the peace are abolished in Norton and Coventry Townships, for reasons that will appear in the discussion which follows. A determination of your question resolves itself to a construction of the provisions of Sections 1579-1174 and 1579-1176 of the municipal court act.

Section 1579-1174, General Code, provides as follows:

"All proceedings, judgments, executions, dockets, papers, money, property and persons subject to the jurisdiction of the mayor's court of the city of Barberton and the courts of any justice of the peace for Norton and Coventry townships whose term of office has expired on taking effect of this act, shall be turned over to the municipal court herein created; and thereafter the cause shall proceed in the municipal court as if originally instituted therein, the parties making such amendments to their pleadings as required to conform to the rules of said courts."

Section 1579-1176, General Code, provides as follows:

"Upon the qualification of the municipal judge, as provided in this act, the jurisdiction of the mayor of the said city of Barberton and of all justices of the peace in Barberton, Norton and Coventry Townships, in all civil and criminal matters, shall cease and no justice of the peace or constable shall thereafter be elected in said Barberton, Norton and Coventry Townships."

You will note from a reading of Section 1579-1174 that provision is made for the turning over to the municipal court of all proceedings, judgments, executions, etc., of any justice of the peace for Norton and Coventry Townships "whose term of office has expired on taking effect of this act." It may be urged that the provision of Section 1579-1174 does not apply to a justice of the peace whose present term of office to which he was elected did not expire on the taking effect of the municipal court act. However, it will be noted that in Section 1579-1176, it is provided that the jurisdiction of "all justices of the peace in Barberton, Norton and Coventry Townships, in all civil and criminal matters, shall cease." If the provisions of Section 1579-1174 have the effect of excepting a justice of the peace whose present term of office did not expire when the municipal court act became effective, then such justice of the peace would have the right to retain his dockets in criminal and civil matters, but would not have jurisdiction in such matters by virtue of the terms of Section 1579-1176 of the General Code. It must be presumed that the legislature did not intend to create such a situation.

Since the continuation of jurisdiction of a justice of the peace in civil and criminal matters in Norton and Coventry Townships after the effective date of the municipal court act of the city of Barberton is authorized, if at all, by implication, whereas the jurisdiction of such justices of peace in such matters is clearly taken from them by express provision, and in view of the situation created of a justice of the peace retaining the dockets in criminal and civil matters without jurisdiction in such matters, I am constrained to hold that it was the intention of the legislature to terminate the jurisdiction of all the justices of peace in Norton and Coventry Townships in all criminal and civil matters as soon as a municipal judge was elected and qualified under the act creating the municipal court of Barberton, and it was the further intention of the legislature to require all the justices of peace in these townships to turn over to the municipal court all dockets and files pertaining to civil and criminal matters.

Therefore, in specific answer to your inquiry, I am of the opinion that by virtue of the act establishing the municipal court (Sections 1579-1124 to 1579-1176, inclusive, General Code) for Barberton, Ohio, the jurisdiction of all justices of peace in Coventry and Norton Townships in all civil and criminal matters ceased as soon as a municipal judge was elected and qualified, irrespective of when the term of such office expired, and such officers must turn over their dockets and files pertaining to civil and criminal matters.

Respectfully,
GILBERT BETTMAN,
Attorney General.