

1246.

JUSTICE OF THE PEACE—HOW NEWLY CREATED OFFICE IS FILLED
—SECTIONS 1713 AND 1714 G. C. CONSTRUED.

SYLLABUS:

In the case of a newly created office of an additional justice of the peace in a given township by the probate court, neither such court, nor the trustees of the township, are authorized to fill this position of justice of the peace by appointment, but the trustees shall give notice to the electors of the township to elect the additional justice so added at the regular election for such office following the date of the creation of the office by the probate court.

COLUMBUS, OHIO, March 6, 1924.

HON. ALBERT H. SCHARRER, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent letter requesting the opinion of this department as follows:

“A question has arisen in several townships in this county where the township trustees have made application to Probate Court pursuant to the provisions of section 1713 of the Ohio General Code, for the creation of an additional office of justice of the peace in such townships, whether the trustees can immediately appoint an additional justice when the Probate Court has ordered the creation of an additional office of justice of the peace in such township, or whether the trustees must wait until the next regular election. Section 1713 of the Ohio General Code, after reciting that the Probate Court may add one or more justices of the peace, then provides that ‘the trustees shall give notice to the electors of the township to elect the justice or justices so added, at the regular election for such office.’

The township trustees contend that as soon as the Probate Court has ordered the creation of an additional office of justice of the peace, a vacancy immediately exists, under section 1714, which they have the right to fill by appointment. The Probate Court in this county contends that after it has ordered the creation of an additional office of justice of the peace, the trustees cannot fill the same for the reason that there has never been any vacancy in the office, and they must wait until the next regular election before the office can be filled.

The Probate Court therefore contends that under section 1714, a vacancy cannot be construed to exist where no justice of the peace has ever served in the position.

Will you therefore kindly advise us whether, under sections 1713 and 1714 of the Ohio General Code, a justice of the peace may be immediately appointed by the township trustees, after the Probate Court has ordered the creation of an additional office of justice of the peace, or whether they must wait until the next regular election to fill such office of justice of the peace?

Will you also advise us whether the Probate Judge himself may appoint a person to fill the position created by him until the next regular election?”

Section 1713 G. C. authorizing the increase or decrease in the number of justices of the peace in any given township provides as follows:

"When it is made to appear to the satisfaction of the probate judge of a county that there is not a sufficient number of justices of the peace in a township thereof and that public notice has been given therein that application will be made for an additional number of justices, the court in its discretion may add one or more justices to such township. The trustees shall give notice to the electors of the township to elect the justice or justices so added at the regular election for such office. If it is made to appear to such court that the number of justices in a township should be decreased, it may restrict the number as it deems proper. All justices of the peace shall be elected for a term of four years. No justice may be deprived of his commission until the expiration of the term for which he was elected."

The provisions for the filling of a vacancy in the office of justice of the peace are found in section 1714 G. C., and are as follows:

"If a vacancy occurs in the office of justice of the peace by death, removal, absence for six months, resignation, refusal to serve, or otherwise, the trustees within ten days from receiving notice thereof, by a majority vote, shall appoint a qualified resident of the township to fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of the courts of such vacancy and the date when it occurred."

Section 1715 G. C. provides as follows:

"At the next regular election for such office, a justice of the peace shall be elected in the manner provided by law, for the term of four years commencing on the first day of January next following his election."

The provisions of section 1717 G. C. providing for the certificate by the clerk of the court to the secretary of state are as follows:

"In certifying to the secretary of state the appointment of a justice of the peace to fill a vacancy, the clerk of the court shall state in his certificate the name of the justice whose place is supplied by the person whose appointment is so certified, and the date when the vacancy occurred. When the election of an additional justice in a township is properly authorized, the clerk in certifying his election to the secretary of state shall state in his certificate that he is such additional justice of the peace, so authorized and elected."

The question propounded in your inquiry is whether a vacancy exists in the newly created office of justice of the peace in a given township at once upon the probate court making its order for an additional justice of the peace in that township, and if so, how it should be filled.

It would seem that the language contained in section 1713 G. C. that:

"The trustees shall give notice to the electors of the township to *elect* the justice or justices so added at the regular election for such office"

would answer this inquiry.

It is believed that the above provision is exclusive and would specifically govern the filling of the position by an incumbent.

Again referring to the provisions of section 1714 G. C. supra, providing for the

filling of vacancies, no provision is therein contained that would govern the proposed case of creating an additional office of justice of the peace in a given township.

And again referring to the provisions of section 1717 G. C., when the clerk certifies to the secretary of state, he

“shall state in his certificate the name of the justice whose place in supplied by the person whose appointment is so certified, and the date when the vacancy occurred.”

Also,

“When the election of an additional justice in a township is properly authorized, the clerk in certifying his *election* to the secretary of state shall state in his certificate that he is such additional justice of the peace, so authorized and *elected*.”

The word “vacancy” suggests the idea of the office having been previously filled. With this thought in mind, it is believed that no such vacancy exists in the office of justice of the peace, newly created, as an additional justice of the peace in a township.

It is also my opinion that the language found in section 1713 G. C. that :

“The trustees shall give notice to the electors of the township to *elect* the justice or justices so added at the regular election for such office”

is controlling and governs in all respects the manner of filling this office, newly created.

Specifically answering your inquiry, it would therefore follow, that neither the probate court who created the additional office, nor the township trustees, would have authority to appoint a justice of the peace to this newly created position, but on the contrary, the trustees would be required to give notice to the electors of the township to *elect* the justice so added at the *regular election for such office*, which would mean the first regular election in an odd numbered year following the creation of the office by the probate court.

Respectfully,
C. C. CRABBE,
Attorney-General.

1247.

APPROVAL, BONDS OF GENEVA RURAL SCHOOL DISTRICT, ASHTABULA COUNTY, \$6,768.14, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, March 6, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.