



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 495

131st General Assembly
(As Introduced)

Rep. Hayes

BILL SUMMARY

- Effective January 1, 2017, abolishes the Perry County County Court and its part-time judgeship and creates in New Lexington the Perry County Municipal Court with one full-time judge and with jurisdiction within Perry County.
- Specifies that the judge of the Perry County Municipal Court initially will be elected in 2017 and nominated only by petition, and provides that the part-time judge of the Perry County County Court whose term commenced on January 1, 2013, will serve as the full-time judge of the Perry County Municipal Court until December 31, 2017.
- Provides that the Clerk of Courts of Perry County is the Clerk of the Perry County Municipal Court.
- Requires the Perry County Prosecuting Attorney to prosecute in the Perry County Municipal Court all violations of state law arising in Perry County.
- Authorizes the Perry County Prosecuting Attorney to enter into an agreement with any municipal corporation in Perry County by which the Prosecuting Attorney prosecutes all cases brought in the Perry County Municipal Court for violations of the municipal corporation's ordinances or for offenses other than violations of state law occurring within the municipal corporation.
- Includes transition provisions upon the abolition of the Perry County County Court and the establishment of the Perry County Municipal Court.

CONTENT AND OPERATION

Perry County Municipal Court

Creation, judge, jurisdiction, and operation

Under the current County Courts Law, the Perry County County Court has one part-time judge most recently elected in 2012.¹

The bill abolishes the Perry County County Court and creates the Perry County Municipal Court to be established in New Lexington beginning January 1, 2017. In the Perry County Municipal Court, one full-time judge will be elected in 2017. Beginning January 1, 2017, the part-time judge of the Perry County County Court that existed prior to that date whose term commenced on January 1, 2013, will serve as full-time judge of the Perry County Municipal Court until December 31, 2017.²

Under the bill, beginning January 1, 2017, the Perry County Municipal Court has jurisdiction within Perry County and is included within the definition of "county-operated municipal court." In the Perry County Municipal Court, the judge will be nominated only by petition that must be signed by at least 50 electors of the territory of the Court and conform to the provisions of law pertaining to the nomination of municipal court judges.³

Clerk of courts and assistant clerks

Under the bill, the Clerk of Courts of Perry County is the Clerk of the Perry County Municipal Court and may appoint a chief deputy clerk for each branch office that is established by a municipal court pursuant to continuing law, and assistant clerks as the judge of the Court determines are necessary, all of whom will receive the compensation that the Court's legislative authority prescribes.⁴ Continuing law defines "legislative authority" regarding a county-operated municipal court as the board of county commissioners of the county in which the court is located.⁵

The Clerk of Courts of Perry County, acting as the Clerk of the Perry County Municipal Court and assuming the duties of that office, will receive compensation

¹ R.C. 1907.11(A).

² R.C. 1901.01(A), 1901.02(A)(32), 1901.08, and 1907.11(A).

³ R.C. 1901.02(B), 1901.03(F), and 1901.07(C)(6).

⁴ R.C. 1901.31(A)(2)(c).

⁵ R.C. 1901.03(B).



payable from the Perry County Treasury in semi-monthly installments at $\frac{1}{4}$ the rate that is prescribed for the clerk of courts of common pleas as determined in accordance with the county's population and the rates set forth in the continuing laws setting the salary schedules for clerks of courts of common pleas and the salary increases for county elected officials.⁶ The continuing law on group health care coverage for clerks, deputy clerks, and their spouses and dependents will not apply to the Clerk of the Perry County Municipal Court if health care coverage is provided to the Clerk by virtue of the Clerk's employment as the Clerk of the Court of Common Pleas of Perry County.⁷

Criminal prosecutions

Under the bill, the Perry County Prosecuting Attorney must prosecute in the Perry County Municipal Court all violations of state law arising in Perry County, and may enter into an agreement with any municipal corporation in the county pursuant to which the Prosecuting Attorney prosecutes all cases brought before the Perry County Municipal Court for violations of the ordinances of the municipal corporation or for criminal offenses other than violations of state law occurring within the municipal corporation. For prosecuting these cases under such an agreement, the Prosecuting Attorney and the municipal corporation may agree upon a fee to be paid by the municipal corporation, which fee must be paid into the Perry County Treasury, to be used to cover the expenses of the Office of the Prosecuting Attorney.⁸

Transition provisions and effective date

The bill provides that effective January 1, 2017, the Perry County County Court is abolished. All causes, judgments, executions, and other proceedings pending in that Court at the close of business on December 31, 2016 must be transferred to and proceed in the Perry County Municipal Court on January 1, 2017, as if originally instituted in the Perry County Municipal Court. Parties to those causes, judgments, executions, and proceedings may make any amendments to their pleadings that are required to conform them to the rules of the Perry County Municipal Court. The Clerk of the Perry County County Court or other custodian must transfer to the Perry County Municipal Court all pleadings, orders, entries, dockets, bonds, papers, records, books, exhibits, files, moneys, property, and persons that belong to, are in the possession of, or are subject to the jurisdiction of the Perry County County Court, or any officer of that Court, that pertain to those causes, judgments, executions, and proceedings at the close of business on December 31, 2016. All employees of the Perry County County Court must be

⁶ R.C. 1901.31(A)(2)(c).

⁷ R.C. 1901.312(D).

⁸ R.C. 1901.34(B) and (D).



transferred to and become employees of the Perry County Municipal Court on January 1, 2017. Effective on that date, the part-time judgeship in the Perry County County Court is abolished.⁹

The bill provides that the Revised Code sections pertaining to the Perry County Municipal Court, as amended by the act and as described above, take effect January 1, 2017.¹⁰

COMMENT

The bill provides that in the newly created Perry County Municipal Court, one full-time judge will be elected in 2017. Beginning January 1, 2017, the part-time judge of the Perry County County Court that existed prior to that date whose term commenced on January 1, 2013, will serve as full-time judge of the Perry County Municipal Court until December 31, 2017.¹¹ This provision is similar to the provision in Am. Sub. H.B. 509 of the 129th General Assembly in which two part-time judges of the Sandusky County County Court (abolished by the Act) that existed prior to January 1, 2013, must serve as part-time judges of the Sandusky County Municipal Court (created by the Act) until December 31, 2013.¹²

In *State ex rel. Whitehead v. Sandusky County Board of Commissioners*,¹³ the Ohio Supreme Court held that provision of H.B. 509 "unconstitutional because the General Assembly does not have power to appoint judges under the Ohio Constitution."¹⁴ It appears R.C. 1901.08, as amended by H.B. 495, would be unconstitutional under the *Whitehead* ruling because the General Assembly does not have the power to appoint the part-time judge of the Perry County County Court to serve as the full-time judge of the Perry County Municipal Court until December 31, 2017.

⁹ Section 3.

¹⁰ Section 4.

¹¹ R.C. 1901.08.

¹² R.C. 1901.08.

¹³ 133 Ohio St.3d 561 (2012).

¹⁴ *Id.*, at pp. 565-566.



HISTORY

ACTION

DATE

Introduced

03-24-16

