

1966 O. A. G.

OFFICIAL OPINION NO. 30

December 2, 1966

**TOWNSHIP OFFICERS—Justices of the Peace—Justices
Having County-Wide Jurisdiction—Lake County
as Exception.**

Opinion Requested by Hon. George W. Schmidt, Justice of the Peace.

I am in receipt of your recent inquiry as to the jurisdiction of justices of the peace, especially those located in Marion County, in relation to civil actions in general and replevin actions in particular, with particular note being paid to Acts 1959, ch. 166.

There have been a number of Acts of the General Assembly relating to the jurisdiction of justices of the peace and so your question is best answered by tracing the jurisdiction through the several Acts.

2 R.S. 1852, ch. 1, contains several sections pertaining to the jurisdiction of justices of the peace. The sections may be found in the 1946 Replacement of Vol. 2, Part 2, Burns Annotated Indiana Statutes. § 9 of the Act, formerly Burns § 5-201, provided:

“The jurisdiction of justices in civil cases shall, unless otherwise provided by law, be limited to their townships respectively.”

Section 13 of the Act, as last amended by Acts 1885 (Spec. Sess.), ch. 95, § 1, formerly Burns § 5-202, provided:

“No person who is a resident of any township in the state shall be sued out of said township except as specified in the above mentioned act, unless said suit is

OPINION 30

commenced by *capias ad respondendum*, or where there shall be no justice competent to act in said township, and except that on [an] action of debt for the recovery of any penalty in favor of any plank road, gravel road or turnpike company may be prosecuted in any township of the county where the offense was committed.”

Section 126 of the Act, as amended by Acts 1921, ch. 247, § 1, formerly Burns § 5-203, provided:

“Whenever there is no acting justice of the peace in any township, the nearest justice in the county shall have jurisdiction of all cases arising in such township having no justice.”

Section 15, formerly Burns § 5-204, provided:

“Suits for trespass to real and personal property may be brought either in the township where the defendant resides or where the trespass was committed, and process served throughout the county.”

The early law, then, basically limited the jurisdiction of justices of the peace to the townships in which they held office, and provided that a person must be sued in the township in which he resides. There were certain exceptions made to the basic rule. One such exception is that appearing in the last quoted statute in relation to trespasses to property. *Replevin* is based on a trespass to property and the statute has been interpreted as permitting suit to be brought before a justice in either the township of defendant's residence, or the township wherein the taking of the property involved occurred, or the township in which the property is being unlawfully detained. See *Jocelyn v. Barrett*, 18 Ind. 128 (1862); *Copple v. Lee*, 78 Ind. 230 (1881).

The preceding statutes were specifically repealed by Acts 1951, ch. 139, § 3. Section 1 of the 1951 Act established the jurisdiction of a justice of the peace as follows:

“Justices of the peace shall have concurrent jurisdiction with other justices of the peace throughout the

county in which such justices of the peace are commissioned in all civil cases, unless otherwise provided by law.”

The 1951 Act thus completely changed the theory of jurisdiction of justices of the peace. The earlier Act had basically limited the justices to their own townships and gave them county-wide jurisdiction in only a few specific instances; the 1951 Act gave all justices county-wide jurisdiction in all civil cases unless some other statute specifically limited the jurisdiction in some particular instance. The 1951 Act did not itself contain any such limitation.

The 1951 statement of jurisdiction was superseded by, but not greatly changed by, Acts 1957, ch. 322. The 1957 Act was a comprehensive Act relating to justices of the peace and constables. Certain parts of the Act have been declared unconstitutional, but such parts are not pertinent to your question and do not affect the constitutionality of the remainder of the Act. Section 9 of Acts 1957, ch. 322, the same being Burns IND. STAT. ANN., § 5-205a, provides:

“Each justice of the peace shall have jurisdiction in civil actions up to and including the amount of five hundred dollars [\$500] and said jurisdiction shall be coextensive with the boundaries of the county of which any such township is a part.”

The basic theory of the jurisdiction of a justice of the peace set out in the 1951 Act, that such jurisdiction is county-wide, is reaffirmed in the 1957 Act.

In 1959 the General Assembly adopted further legislation relating to the jurisdiction of justices of the peace. Acts 1959, ch. 166, is entitled:

“AN ACT concerning justices of the peace in townships located in counties that have a population of not less than two hundred fifty thousand and not more than five hundred fifty thousand, according to the last preceding United States census, and defining the jurisdiction of such justices of the peace.”

OPINION 30

It is apparent from the title of the Act that the provisions contained therein are to be applied only to those justices residing in counties falling within the specified population limits.

Section 1 of the Act, the same being Burns IND. STAT. ANN., § 5-205b, provides :

“The jurisdiction of justices of the peace in townships located in counties that have a population of not less than two hundred fifty thousand [250,000] and not more than five hundred fifty thousand [550,000], according to the last preceding United States census, in all civil cases, shall be limited to their respective townships.”

Section 2 of the Act, Burns § 5-205c, provides :

“No person who is a resident of any such township shall be made a party defendant to any civil action in any justice of the peace court which is located outside the geographical limits of the township of his residence: Provided, however, That in the event there is no justice of the peace in the township, any resident of such township may be made a party defendant to any civil action brought in a justice of the peace court of any adjacent township.”

In other words, the Legislature has provided that in certain counties the jurisdiction of a justice of the peace will not be county-wide as provided in 1951 and reaffirmed in 1957, but rather that the jurisdiction of justices of the peace in such counties will be limited in the same manner that the jurisdiction of all justices of the peace was limited by the 1852 Act. In fact, the limitation contained in the 1959 Act is much stricter than that contained in the earlier Act since it specifically provides that the jurisdiction will be limited “in all civil cases.” The only exception is in those townships in such counties where there is no justice of the peace.

Insofar as replevin is concerned, such actions in the counties falling within the population limits expressed in the 1959 Act

1966 O. A. G.

must be brought in the township where the defendant resides. The Act contains no special exception for trespass as to property as was contained in the 1852 Act.

Therefore, it is my opinion that in counties having a population of less than two hundred and fifty thousand and in counties having a population of more than five hundred and fifty thousand a justice of the peace has county-wide jurisdiction in civil cases, and any resident of such counties can be made a party defendant to any civil action in any justice of the peace court located inside the county. In all other counties a justice of the peace has jurisdiction only within the township in which he holds office and a resident of such counties cannot be made a party defendant in any civil action in any justice of the peace court which is located outside the township of his residence, with the exception that should there be a township within any such county not having a justice of the peace then the justices of the peace in adjacent townships would have jurisdiction in that township and residents of the township could be made a party defendant in the adjacent townships' courts.

Since Marion County, the county with which you are primarily concerned, has a population of 697,567 according to the last preceding United States census, all justices of the peace in Marion County have county-wide jurisdiction and any resident of that county may be made a party defendant in any civil action filed in any such court.