

OPINION  
60-154

April 25, 1960, (OPINION)

JUSTICE COURT

RE: Justice of the Peace - Supplantation by County Justice

This is in reply to your letter in which you ask for advice and guidance relating to the office of justice of the peace. You state that chapter 268 of the 1959 Session Laws provides that the office of the justice of peace be abolished, but the board of county commissioners has made no decision as yet on the question of appointing a county justice. You further state that you have a gentleman who is circulating petitions for the purpose of being reelected to the office of justice of the peace. You also state that your county auditor is doubtful whether he may refuse to accept petitions of this individual as a candidate for justice of peace on the June primary ballot.

You then ask whether the justice of the peace may be elected this year and also whether or not the justice of peace may serve in the interim period until a county justice is appointed.

You will note that chapter 268 has a delaying effective date. Under section 33 of the chapter it is provided that the act shall become effective July 1, 1961. Section 1 of this chapter abolishes the office of justice of the peace.

Section 27-1801 as created by section 5 of chapter 268 provides as follows:

"OFFICE OF COUNTY JUSTICE; WHEN CREATED; HOW FILLED). The office of county justice may be created by resolution of the board of county commissioners in any county. The holder of such office shall be a qualified person and shall be elected by the electors of the county, or counties, for which he serves, in the same manner as other elective county offices. In the event the office of county justice, when created, is not filled by election, the board of county commissioners shall have the power to appoint a qualified person to said office."

These sections abolish the office of justice of peace and provide that the office of county justice be created by resolution of the county commissioners. A subsequent section also provides for the qualifications and tenure of the office.

Being that the new law does not go into effect until July 1, 1961, the law as it now is would be in full force and effect until said date. As such, the office of the justice of the peace in the county is an office to be filled in the election this year.

There might be some question whether the justice of the peace elected in 1960 could serve the entire term for which he was elected or whether he would only be entitled to serve until July 1, 1961, the

date when the office will be abolished. The great weight of authority is that where an office is completely abolished by law the office ceases to function and is no longer in existence. As such, the officer holding the office no longer can hold such office. See 67 C.J.S. Officers Section 10, page 120.

In so much that the act does not take or go into effect until July 1, 1961, and another legislative session will be held prior to that time, it is quite conceivable that the legislature might wish to take another look at chapter 268, and make either modifications, additions, or even repeal it.

It is therefore our opinion under the existing law that any person otherwise qualified upon presenting the proper petitions to the county auditor is entitled to have his name placed on the ballot for the office of justice of the peace.

It is our further opinion that if such person is elected he is entitled to such office until it is abolished July 1, 1961, unless the legislature changes any provisions of chapter 268 as are material to the question at hand.

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