

Opinion No. 12**Township Officers—Justices of the
Peace—Office Hours—Court,
Holding of.**

HELD: Justices of the peace in a township, the population of which does not exceed ten thousand (10,000) people, are not required to maintain fixed and definite office hours; however, all justices of the peace must be reasonably available to hold court at all times, and must not place themselves in such a position that a party who wishes to secure their services will be unable to do so.

March 28, 1953.

Mr. Irving C. Pearson
County Attorney
Deer Lodge County,
Anaconda, Montana

Dear Mr. Pearson:

You have requested that I issue an official opinion relative to the hours which a justice of the peace must main-

tain in a township, the population of which does not exceed ten thousand (10,000) people.

The office of justice of the peace is a constitutional office, created by Section 20, Article VIII of the Montana Constitution. Section 22 of Article VIII, provides:

"Justices' courts shall always be open for the transaction of business, except on legal holidays and non-judicial days."

In *Miller vs. Emerson*, 120 Mont. 380, 186 Pac. (2d) 220, a similar constitutional provision directed at the district courts, received the following construction:

"Section 17 of Article VIII of the Montana Constitution in part provides: 'The district court in each county which is a judicial district by itself shall be always open for the transaction of business except on legal holidays and non-judicial days.'

"The purpose of this part of the section was to compel district courts in those counties which by themselves constitute a judicial district to be always open for the transaction of business 'except on legal holidays and non-judicial days.' It does not purport to void any judicial act performed on a legal holiday. It simply excuses district courts from being open for business on legal holidays and non-judicial days and commands them to be open for business on all other days."

The Constitution uses the word "courts," not the word "office." The meaning of these words has become well settled; they are not synonymous. Compare: *State vs. Cannon*, (Wisc.) 240 N. W. 441, and *Bigham vs. State*, (Texas) 20 S. W. 571. Therefore the framers of the Constitution did not intend that judges of the district court of each county which is a judicial district by itself, and justices of the peace must maintain an office which is always open for business. In *Cashman vs. Vickers*, 69 Mont. 516, 223 Pac. 897, our court construed the Constitution as follows:

"The plain terms of constitutional provisions should prevail. It is not to be supposed that the people have

looked for any abstruse or recondite meaning in employing words in a constitution, 'but rather that they have accepted them in the sense most obvious to the common understanding' and have ratified the instrument in the belief that that was the sense designed to be conveyed."

Section 25-306, R. C. M., 1947, as amended by Chapter 175, Laws of 1949, enumerates the hours which a justice of the peace must maintain in townships having a population of ten thousand (10,000) people and upwards. It further provides:

". . . and such justices shall occupy such quarters as may be furnished and selected for them by the board of county commissioners, and said board may, in its discretion select suitable quarters for such and may, in its discretion, pay for same from moneys in the county treasury."

There is no statute relating to justices of the peace in townships, the population of which is less than ten thousand (10,000) people, which is comparable to Section 25-306, *supra*, as amended. However, Section 16-3606, R. C. M., 1947, provides:

"Commissioners to furnish justices of peace forms for criminal cases—quarters and equipment. The several boards of county commissioners shall furnish at the expense of their respective counties to all qualified and acting justices of the peace all necessary justice dockets, all blanks or forms required by the justices of the peace in the handling of criminal cases. In townships having a population of 1,500 or more, according to the last previous United States census, the board of county commissioners may at their discretion, furnish such office quarters, furniture, fixtures and other supplies as they may deem necessary, provided, however, that the office quarters so furnished shall be located in the county court house, if possible." (Emphasis supplied.)

Sections 25-306, 25-307 and 16-3606, R. C. M., 1947, refer to justices of the peace and classify said justices

according to the population of their township. Had the legislature intended that all justices of the peace must maintain definite office hours, these sections would not have been qualified in their application according to population. The qualification creating various classes by accepted rules of statutory construction logically excludes groups which do not come within the qualification. Therefore, the legislature must not have intended to establish definite office hours for justices of the peace in townships with a population of less than 10,000 people.

However, Section 93-402, R. C. M., 1947, provides:

“A justice’s court may be held at any place selected by the justice holding the same, in the township for which he is elected or appointed; and such court is always open for the transaction of business, except on legal holidays and non-judicial days; provided, that said justice may hold court beyond the limits of his township as provided in Section 93-403.”

Under this statute, and Section 22 of Article VIII of the Constitution, *supra*, the justice must not place himself in such a position that he is not available to hold court and execute the duties which necessarily attach to holding court. Although the justice of the peace in a township which has less than 10,000 people may determine where he will have his office located and where he will hold court, his whereabouts must be easily ascertainable by any person desiring his services in order that the work of his office may be performed efficiently and effectively, particularly during the hours when business is generally transacted.

It is therefore my opinion that justices of the peace in a township, the population of which does not exceed ten thousand (10,000) people, are not required to maintain fixed and definite office hours.

However, it is further my opinion that all justices of the peace must be reasonably available to hold court at all times, and must not place themselves in such a position that a party who seeks their services will be unable to locate a justice and, consequently, be forced to remain unattended.