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SURVEY OF THE MINOR JUDICIARY IN PENNSYLVANIA

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The Constitution of Pennsylvania, Art. 5, Sec. 1, vests the judicial power of the Commonwealth in a "Supreme Court, the courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the General Assembly may from time to time establish."

The term "magistrate" as used in this section has been held to include justices of the peace and aldermen particularly in view of the fact that Section II of Article 5 specifically refers to these officers. The justices of the peace and aldermen, therefore, are constitutional judicial officers and are as much a part of the judicial system of the Commonwealth as the Supreme Court itself. Throughout the constitutional history of our Commonwealth they have been constitutional officers.[1]

Actually, the justices of the peace and aldermen of our Commonwealth constitute the bulk of our judiciary. This is apparent upon consideration of the fact that, according to the best statistics available, the number of judges and justices of the various courts of record within the Commonwealth is 184; whereas over 4000 justices of the peace and aldermen were in office in the Commonwealth in the year 1940.[2]

Lack of Knowledge About the Minor Judiciary

The minor judiciary of Pennsylvania has often been criticized but never has been thoroughly studied either as a system of administering justice in small claims or as a part of the administration of criminal justice in the Common-

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[1]See Constitution of 1776, Sec. 26; Constitution of 1790, Art. 5, Sec. 1; Constitution of 1838, Art. 5, Sec. 1, and Constitution of 1873, Art. 5, Sec. 1.

[2]See Preliminary Report, Committee on Minor Judiciary, Pennsylvania Bar Association, January 30, 1942.

wealth. Before it is possible to speak with the authority of facts and appraise the minor judiciary of the state, a thorough study of the office is necessary. No agency, public or private, in the Commonwealth heretofore even knew how many justices of the peace and aldermen existed in the state, although the minor judiciary collects fines for the township, the borough, the city, the county, and the state. The county pays them costs in certain cases, and the state audits their dockets on occasion, but no public agency in the Commonwealth is charged with any adequate measure of control over them, nor possessed of adequate facts to deal with them.

Accordingly, the Pennsylvania Bar Association, realizing the importance of the minor judiciary in our judicial system, created a Committee on Minor Judiciary in the year 1937.[8]

This Committee has functioned to the present time and has submitted several reports to the Association showing the progress of the study. It is planned that the findings of the Committee will be submitted to the Association at its Bedford meeting this June.

The data and statistics of 66 counties have been gathered and analyzed. All available county records were used for this purpose. Where the records of the counties were incomplete or not available in proper form, other arrangements were made to procure the essential facts. The various departments of the State government at Harrisburg, which deal with the minor judiciary, have been visited; the records and data have been studied and the results compiled and analyzed. Actual field work and personal visits to aldermen and justices of the peace have been made in many of the counties.

The courts of the justices of the peace are not, of course, courts of record. In most cases the records are not available, and even where they are available, are usually so poorly kept as to be of little help.

Number of Minor Judiciary Officials

The Commonwealth supports the largest number of minor judiciary of any state in the nation, some 4,000 of them being in office in 1940. This figure includes only justices of the peace and aldermen, but if the magistrates of Philadelphia, the burgesses of Pennsylvania's boroughs and the mayors of the cities, all of whom have varying degrees of minor judicial authority, are counted, the figure exceeds 5,000. Furthermore, this is a minimum number as only the justices of the peace and aldermen who were actually commissioned and serving in 1940 are included in it. A total of 5,620 justices of the peace and aldermen alone were elected by the voters at the municipal elections of 1935, 1937 and 1939. (Since the justices and aldermen are elected for six-year terms, three municipal elections had to be studied to determine the number of minor judiciary actually in office in any year.) Add to this the number of burgesses,

[8]See 43rd. Annual Report, Pennsylvania Bar Association, Vol. XLIII, page 129.

mayors, and magistrates and you will have more than 6,600 minor judiciary members chosen by ballot in Pennsylvania. And this figure does not include appointments made by the governor in case of vacancy.

How interested is the average citizen in becoming a justice of the peace or alderman? Of the 5,620 elected, only 71 per cent, or 3,989, bothered to pay the fee to obtain a commission from the Secretary of the Commonwealth. In other words, 29 per cent of the successful candidates for the office of justice of the peace or alderman were not interested enough in the job to qualify for it by taking out a commission. Some of these disinterested candidates were elected by friends "writing in" their names on the ballot or were put on the ballot by an over-zealous party chairman anxious to complete his slate, without their permission or knowledge.

Personnel of the Minor Judiciary System

Who are the minor judiciary in Pennsylvania? The typical Pennsylvania justice of the peace or alderman is a man of 50 years of age, who has served slightly more than one full six-year term as a justice or alderman. He has no special training for his judicial position and lists his occupation as justice of the peace, laborer or unskilled worker, farmer, or skilled worker.

The ages of 545 justices and aldermen in office in 1940 were studied to ascertain the average age of the justices. The largest group were between 41 and 50 years of age and 31 per cent were over 60. The average age of all the justices studied was 50 years. The age groups 61 to 70 and 71 to 80 were represented by particularly large numbers. Eleven per cent of the justices were over 70, where physical and mental deterioration occurs at an accelerated rate. Seven per cent of the justices were 30 or younger.

The length of service of all the minor judiciary in office in 1940 was analyzed. The largest group of them, 44 per cent, were serving their first term. A few had held office for half a century or more, and a considerable number have had 25 years or more experience as members of the minor judiciary.

The occupations of 3,225 minor judiciary members in 64 counties were studied. Twenty-one per cent gave their occupation as "justice of the peace", 17 per cent were laborers or unskilled workers, 12 per cent were farmers, and 11 per cent were skilled laborers. The remainder were scattered among many occupations, the most numerous of which were merchants, clerks, real estate and insurance, professional workers, and retired.

The County Is the Only Public Body Compensating the Minor Judiciary

The only public agency paying the minor judiciary costs is the county. The county pays the justices and aldermen costs in three kinds of cases: (1) dismissed cases, wherein the justice finds no cause to hold the defendant and thereupon assesses the costs on the county; (2) summary convictions, wherein the justice finds the defendant guilty and sends him to jail or fines him, but in default of

payment of the fine and costs, charges the costs to the county; (3) in court cases wherein the justice binds the defendant over for trial in the court of quarter sessions or oyer and terminer.

During the period 1937 to 1940 inclusive the counties paid their minor judiciary an average of $334,000 in costs annually. The highest amount paid in one year to the minor judiciary was $27,572.60, paid by Luzerne County in 1937. The highest amount paid per capita population was paid by Northumberland County. In 1937 and 1938, this county paid $.17 per capita to its minor judiciary; in 1939, $.19, and in 1940, $.15.

Although the counties are the only public agency paying the minor judiciary costs, the State receives a large share of the fines collected by the minor judiciary. In the 1940-1941 fiscal year the Commonwealth received $562,000 in fines from this source, more than 74 per cent of which was for violations of the motor vehicle code. The township, borough, county, and city also receive some fines collected by the minor judiciary.

Financial Control

The collection of fines by the minor judiciary introduces the subject of fiscal control of these judicial officers. The law makes each unit of government responsible for the auditing of the justices' accounts only as they pertain to fines due that unit of government.[4] The state is the only agency that actually makes a systematic check of the records of the minor judiciary, although in isolated cases, counties, cities, boroughs, and townships do audit the accounts of the minor judiciary handling their fines. It is evident that the authority for auditing the accounts of the minor judiciary is injudiciously spread among all the governmental units in the Commonwealth with the consequent result that no thorough and adequate check is ever made.

Payment of Costs to the Minor Judiciary by the Counties

The study of the payment of costs by the counties to the minor judiciary revealed several important facts. A relatively small number of the justices and aldermen receive almost all the costs paid by the county. Thirty-eight per cent of the justices and aldermen did not receive any costs from the county at all in 1940, indicating that the minor judicial business, as reflected by the payment of costs by the county, is concentrated in a relatively small percentage of the minor judiciary. Twenty-four per cent of the minor judiciary received 90 per cent of the costs paid by the counties in 1940.

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[4]Act of July 12, 1935, P.L. 680, amending the Act of June 24, 1931, P.L. 1206, Section 1001; Act of May 28, 1937, P.L. 937, amending the Act of May 1, 1933, P.L. 103, Section 545; Act of May 4, 1927, P.L. 519, Article X, Section 1035, as amended by the Act of June 9, 1931, P.L. 386; Act of May 18, 1933, P.L. 818, Section 1; Act of July 18, 1935, P.L. 1290, Section 4; Act of June 4, 1937, P.L. 1608, Section 2; Act of June 23, 1931, P.L. 932, Article XVII, Section 1704.

Dockets and Legal Forms Used by the Minor Judiciary

The minor judiciary are required to file their filled dockets with the prothonotary and turn over their unfilled dockets to their successors in office.[5] This is universally disregarded by our minor judiciary, and only in isolated cases do the dockets ever find their way into the hands of the prothonotary. And in these cases, the relatives of a deceased justice are usually the ones who bring them in when the estate is being settled.

The use of legal forms by the minor judiciary is another indication of the condition of their courts. Some counties supply their minor judiciary with all forms needed, but most counties do not supply any forms at all. There is no legal obligation on the part of the county to supply forms, but some have found that this practice is helpful in standardizing the justices' reports to the county. The most widely supplied form is the transcript. Some justices purchase their own forms from legal publishing companies and others do not make use of forms at all. It is readily apparent that great variation exists in the use of forms and that no standardization is possible with the present arrangement. The Department of Revenue, however, furnishes a standardized form to the minor judiciary for reporting motor vehicle fines to the Commonwealth.

The importance of the minor judiciary within our judicial system must never be underrated. The number of cases with which they deal each year in the Commonwealth exceeds by many times the number of cases handled by courts of record. In many cases they are the courts of first instance; they come more in contact with the people in matters involving small claims, summary proceedings, and the arrest and detention of persons accused of crime. Daily they make more decisions involving the liberties and properties of the citizens and inhabitants of the Commonwealth. They are the poor man's courts.

In the past, too many lawyers as well as our bar associations generally, have made the mistake of looking with some disdain and disfavor upon these courts of minor jurisdiction; and yet, it is here where much of the present day dissatisfaction with our system of justice arises. When a person has been unjustly deprived of his liberty or property by a justice of the peace or an alderman, the judicial machinery of the Commonwealth has, in effect, failed him; it is true that he may appeal for review, but in most instances the costs, time and effort, not to mention the many attendant delays, make this course impractical and discouraging.

Elihu Root said:

> "No one, however, doubts that it is the proper function of government to secure justice. In a broad sense that is the chief thing for which government is organized. Nor can any one question that the highest obligation of government is to secure justice for those

[5]Act of June 1, 1915, P.L. 669.

who, because they are poor and weak and friendless, find it hard to maintain their own rights."[6]

Charles Evans Hughes, when president of the New York State Bar Association in 1919, said in his presidential address:

> "I never speak of this work of our higher courts without the reflection that after all it is the courts of minor jurisdiction which count the most so far as respect for the institutions of justice is concerned. And I wish to make especial application of the point at this time. We are fond of speaking of Americanization. If our bar associations would create a sentiment which would demand that in all our cities the police and minor civil courts should fairly represent the Republic as the embodiment of the spirit of justice, our problem of Americanization would be more than half solved. A petty tyrant in a police court, refusals of a fair hearing in minor civil courts, the impatient disregard of an immigrant's ignorance of our ways and language, will daily breed Bolshevists who are beyond the reach of your appeals. Here is work for lawyers. The supreme court of the United States and the court of appeals will take care of themselves. Look after the courts of the poor, who stand most in need of justice. The security of the Republic will be found in the treatment of the poor and ignorant; in indifference to their misery and helplessness lies disaster."[7]

John Alan Hamilton, speaking in 1920 before the New York State Bar Association, said:

> "A man can but lose what he has. If a court has a jurisdiction equal to a man's entire capital, it can ruin him just as effectively under the name justice's courts, or municipal court, as it could under the name supreme court.
>
> "If a court can take away a man's liberty, it is a matter of small moment to him, after he is behind the bars, whether he was committed by a court of record or by a court not of record.
>
> "The present mental attitude of the public toward our lower courts is a survival from the time when the 'lower classes' of society neither enjoyed nor expected the consideration accorded to the well-to-do. The importance of the cause under former standards was naturally measured entirely by the amount at stake.
>
> "We are beginning dimly to perceive that if we are to be consistent in our professed desire to provide equal justice for all, we must measure the significance of the cause by its importance to the litigant. With such a standard to be met, who shall say that the small cause of the poor man calls for less wisdom, less judgment, less breadth of vision, than are assumed to be required for incumbency on the higher bench? A suit involving $100 may contain as difficult points of law as one involving $100,000, and if a litigant lack the means of appeal, of what avail to him is all the learning of the supreme court?

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[6]Elihu Root, Forward to JUSTICE AND THE POOR by Reginald Heber Smith, published Carnegie Foundation, 1919.

[7]42 N. Y. State Bar Assn. Reports 224 (1919), at page 240.

> "The most celebrated judgment of Solomon was delivered in a case that would today, in all likelihood, be brought in the first instance before one of our inferior courts—the children's court."[8]

Roscoe Pound, Dean of the Harvard Law School, in his book "The Spirit of the Common Law" states:

> ". . . It is here that the administration of justice touches immediately the greatest number of people. . . . By taking the country as a whole, it is so obvious that we have almost ceased to remark it, that in petty causes—that is, with respect to the everyday rights and wrongs of the great majority of an urban community—the machinery whereby rights are secured practically defeats rights by making it impracticable to assert them when they are infringed. . . . Of all peoples in the world we ought to have been the most solicitous for the rights of the poor, no matter how petty the causes in which they are to be vindicated. Unhappily, except as the organization of municipal courts in recent years has been bringing about a change, we have been callous to the just claims of this class of controversies."

It clearly appears under the circumstances that the minor judiciary of our State is a part of our entire judicial system. It is the duty of lawyers, judges, and bar associations to study and espouse any necessary changes which will make it function better. Indeed, the only excuse for the existence of lawyers and bar associations is that they are necessary to the achievement of justice, whether it be before a minor court or before the Supreme Court, itself.

It is the plan of the Committee to complete its factual study, and, upon the facts themselves, to base such conclusions and make such recommendations and suggestions with respect to improvements as may be warranted.

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[8] 43 N. Y. State Bar Assn. Reports 454 (1920), at page 473.