Florida Law Review

Volume 18 | Issue 1 Article 6

June 1965

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Recommended Citation

Thomas G. Schultz and Ronald C. LaFace, *The Justice of the Peace Court in Florida*, 18 Fla. L. Rev. 109 (1965).
Available at: https://scholarship.law.ufl.edu/flr/vol18/iss1/6

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THE JUSTICE OF THE PEACE COURT IN FLORIDA

The office of Justice of the Peace, originally established during the reign of Edward III in England, was brought to the newly settled America by the English colonists as part of their legal system. The early American justice acted in a dual capacity as administrator and judge. Today, the justice performs these same functions.

In recent years, the American justice of the peace courts have become the subject of a growing amount of criticism, both national[1] and, indeed, international.[2] In Florida, agitation from various quarters for legislative abolishment of this court of convenience has become quite persistent. In view of this, and the absence of any comprehensive study of this court in Florida, it is believed that the system is ripe for examination and comment.

Due to the nature of the subject matter, many of the traditional avenues of legal research, with the exception of statutory and constitutional pronouncements, were not available. Consequently, a substantial amount of time was spent interviewing past members of the Florida Judicial Council, knowledgeable state officials, past justices of the peace, and the lobbyist for the Justice of the Peace and Constables Association of Florida. Several attempts were made to procure information directly from the officers of the above named association, but all such efforts proved futile. The remainder of the information came from the American Bar Association's excellent and exhaustive study of Florida traffic courts[3] and from answers to questionnaires that were mailed to all the Florida justices.

PRESENT STATUS OF JUSTICE OF THE PEACE COURTS

Justice of the peace courts were established and vested with judicial authority by the Florida Constitution of 1885.[4] A 1944 amendment to the original provision sets forth the present law and limits each county to no more than five justice of the peace districts, each with one justice.[5] The amendment recognized those districts existing at the time of its enactment; thus many counties have more than five districts.

The legislature was also granted authority to provide special legislation for the change of existing boundaries, establishment of

1. See The "J.P.": Should He Be Abolished, Saturday Evening Post, Oct. 11, 1958, p. 19.

2. Adam, *Die Friedensrichter in USA*, 19 JURISTENZEITUNG 251 (1964).

3. ABA Traffic Court Program, A Study of Florida Courts Trying Traffic Cases (1964).

4. FLA. CONST. art. V, §1.

5. FLA. CONST. art. V, §11.

new districts, and abolishment of new or preamendment districts.[6] In order for this special legislation to become finally effective, however, it must be approved by a referendum held in the affected county.[7]

Presently, thirty-nine of Florida's sixty-seven counties[8] maintain justice of the peace courts; twenty-three have completely abolished the system;[9] and six have attempted abolishment, but the necessary voter approval was not attained.[10] Apparently Gulf and Okeechobee Counties, both of which were formed from preexisting counties, have never established justice of the peace courts.[11] Hamilton, Lafayette, and Union Counties are statutorily empowered to establish these courts but have not as yet elected justices.[12] In this connection, it is interesting to note that in some districts within a county, individuals are elected to the office on a campaign platform of inactivity, promising the voters that, if elected, they will not exercise the functions of the office – an effective means of abolishing the court.[13] Dixie County appears to be the only county that has abolished justice of the peace courts[14] and subsequently attempted to reestablish them.[15] The attempt, however, was defeated by the voters.

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6. FLA. CONST. art. V, §11 (1).

7. *Ibid.*

8. Baker, Charlotte, Citrus, Clay, Collier, Columbia, Dade, Duval, Escambia, Flagler, Gadsden, Hendry, Hernando, Hillsborough, Jackson, Jefferson, Lee, Liberty, Madison, Manatee, Martin, Monroe, Nassau, Okaloosa, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Suwannee, Taylor, Volusia, and Walton.

9. Alachua, Fla. Laws 1951, ch. 27380; Bay, Fla. Laws 1951, ch. 27393; Bradford, Fla. Laws 1961, ch. 61-1898; Brevard, Fla. Laws 1955, ch. 30607, Broward, Fla. Laws 1955, ch. 30614; Calhoun, Fla. Laws 1963, ch. 63-804; De Soto, Fla. Laws, 1945, ch. 23249; Dixie, Fla. Laws 1953, ch. 29026; Franklin, Fla. Laws 1961, ch. 61-2187; Gilchrist, Fla. Laws 1961, ch. 61-2197; Glades, Fla. Laws 1955, ch. 30779; Hardee, Fla. Laws 1945, ch. 23313; Highlands, Fla. Laws 1953, ch. 29118; Holmes, Fla. Laws 1951, ch. 27622; Indian River, Fla. Laws 1953, ch. 29150; Lake, Fla. Laws 1951, ch. 27664; Leon, Fla. Laws 1955, ch. 30937; Levy, Fla. Laws 1953, ch. 29245; Marion, Fla. Laws 1945, ch. 23396; Palm Beach, Fla. Laws 1957, ch. 57-1693; Santa Rosa, Fla. Laws 1963, ch. 63-1880; Wakulla, Fla. Laws 1959, ch. 59-1959; Washington, Fla. Laws 1953, ch. 29599.

10. Jefferson, Fla. Laws 1961, ch. 61-2339; Nassau, Fla. Laws 1951, ch. 27761; Okaloosa, Fla. Laws 1953, ch. 29330; St. Lucie, Fla. Laws 1953, ch. 29498; Taylor, Fla. Laws 1963, ch. 63-815; Walton, Fla. Laws 1959, ch. 59-1935.

11. ABA Traffic Court Program, *op. cit. supra* note 3, at 16.

12. List of justices of the peace as compiled by the office of the Fla. Secretary of State, Jan. 1965.

13. DOYLE, LAIRD & WEISS, THE GOVERNMENT AND ADMINISTRATION OF FLORIDA 164 (1954).

14. Fla. Laws 1953, ch. 29026.

15. Fla. Laws 1959, ch. 59-685.

JURISDICTION

Civil. Trial jurisdiction is constitutionally provided for justice of the peace courts in all civil matters arising in the justice's district when the amount in controversy does not exceed one hundred dollars.[16] This monetary limitation has remained without change since adoption of the present Florida Constitution in 1885. With today's inflated dollar, this limitation renders the justice of the peace court virtually useless in the relief of the county's often heavy civil case load.[17] Since the legislature cannot raise or lower this upper limit by statute,[18] a haphazard solution to the problem used in one case was to extend the jurisdictional figure for the county's small claims court to three hundred dollars with the designation that the justice serve additionally as the small claims judge.[19]

Justices may issue peace warrants,[20] subpoena witnesses, administer oaths,[21] and cite for contempt of court;[22] however, the punishment for contempt cannot exceed a twenty-dollar fine or twenty-four hours imprisonment.[23]

The Florida Statutes specify civil jurisdiction for justices of the peace in the following situations:[24]

> (a) in actions arising on contracts for the recovery of money only, where the sum demanded does not exceed one hundred dollars;
>
> (b) in personal injury or property damage actions when the damages claimed do not exceed one hundred dollars;
>
> (c) in actions for penalties not exceeding one hundred dollars;
>
> (d) in actions upon bonds conditioned for the payment of money not exceeding one hundred dollars; though when the penalty exceeds that sum, the judgment may be given for the sum actually due. When payments are to be made by installments an action may be brought for each installment as it becomes due, if the installments do not exceed one hundred dollars each;
>
> (e) in actions upon judgments rendered in courts of justices of the peace or by justices or other inferior courts in cities;

16. FLA. CONST. art. V, §11 (2).
17. See Miller v. Davis 174 So. 2d 8, 9 (Fla. 1965) (dissenting opinion).
18. *Ibid.*
19. Laws of Fla. 1961, ch. 61-648, §3.
20. FLA. STAT. §37.21 (1963).
21. FLA. STAT. §37.23 (1963).
22. FLA. STAT. §932.03 (1963).
23. FLA. STAT. §38.22 (1963).
24. FLA. STAT. §37.01 (1) (1963).

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but no such action shall be brought in the same county within five years after the rendition of the judgment, except where the docket or record of such judgment shall be lost or destroyed;

(f) to take and enter judgment on the confession of the defendant, when the amount confessed does not exceed one hundred dollars, exclusive of costs;

(g) in actions for damages for fraud on sale, purchase, or exchange of personal property, where the damages claimed do not exceed one hundred dollars;

(h) of proceedings in attachment, garnishment, replevin, enforcement of liens and distress for rent, when the amount of property involved does not exceed in value one hundred dollars. The proceedings in all such cases shall be as provided by law;

(i) to foreclose mortgages and enforce liens on personal property, where the debt secured does not exceed one hundred dollars. In counties with a population over 400,000, the justices are given concurrent jurisdiction up to one hundred dollars in all civil cases relating to landlord and tenant.[25]

It is specifically provided by statute that a justice does not have jurisdiction of civil actions:[26]

(1) in which the state is a party, except for penalties not exceeding one hundred dollars;

(2) where the title to or boundaries of real estate shall come into question. If it appears at the trial that title to or boundary of real estate is in question, and such title or boundary shall be disputed by the defendant, the justice shall dismiss the action and render judgment against the plaintiff for the costs;

(3) for false imprisonment, slander, malicious prosecution, criminal conversation or seduction.

All civil jurisdiction of the justice of the peace court is exercised concurrently with either a small claims or county judge's court.[27]

Criminal. Criminal trial jurisdiction of the justice of the peace courts is constitutionally limited to nonfelonies.[28] The justice is also empowered to issue process for the arrest of all persons charged with felonies and misdemeanors, such process being returnable to himself or the county judge for examination, release, or commitment of the

25. FLA. STAT. §37.011 (1963).
26. FLA. STAT. §37.02 (1963).
27. FLA. STAT. Table of Courts (1963).
28. FLA. CONST. art. V, §11 (2).

arrestee.[29] The statutes also provide that the justice may act as committing magistrate.[30] Justices are not authorized to act as peace officers, hence firearms[31] and car sirens[32] are prohibited and the only time they may arrest is incident to their right to disperse riotous assembly.[33]

The constitution provides for an elected constable for each justice of the peace district,[34] and the legislature has designated that any constable of the county, or the county sheriff in his stead, shall be the justice's executive officer.[35] A somewhat questionable practice is found in respect to the constitutional and statutory authorization for the constable's office and the designation of his duties, when constables are found to be actively serving in various districts where there are no justice of the peace courts.[36] While the secretary of state names 113 elected justices, 119 constables are listed.[37] Although the constables may perhaps validly serve another county court in addition to that court's regularly prescribed executive officer, it seems that any real need or justification for him disappears. It is doubtful that a constable should be making arrests and performing various other duties without specific responsibility and attachment to a court.

The legislature has prescribed misdemeanor trial jurisdiction on both a population and distance basis. In counties of over 50,000 population with no county court or criminal court of record, the justice may try misdemeanors punishable by fine not exceeding 500 dollars or by imprisonment not exceeding six months.[38] In counties with populations over 50,000 having a county court or criminal court of record,[39] and in those between 30,000 and 45,000 in population,[40] the justice has misdemeanor trial jurisdiction up to 100 dollars or three months imprisonment. If a justice has, since July 1, 1953, been continually holding his court thirty-five miles or more from the county seat, and his county's population is between 23,625 and 24,500, he has misdemeanor trial jurisdiction up to a 500 dollar fine or six months imprisonment or both.[41] With certain exceptions, including a guilty plea by the defendant, any justice in a county with a criminal

29. *Ibid.*
30. FLA. STAT. §37.03 (1963).
31. OPS. ATT'Y GEN. FLA. 049-459 (1949).
32. OPS. ATT'Y GEN. FLA. 047-201 (1947).
33. FLA. STAT. §870.04 (1963); OPS. ATT'Y GEN. FLA. 049-503 (1949).
34. FLA. CONST. art. V, §11 (3).
35. FLA. STAT. §37.16 (1963).
36. ABA Traffic Court Program, *op. cit. supra* note 3, at 95.
37. List of constables as compiled by the office of the Fla. Secretary of State, January 1965.
38. FLA. STAT. §37.01 (2) (1963).
39. FLA. STAT. §37.01 (3) (1963).
40. FLA. STAT. §37.01 (4) (1963).
41. FLA. STAT. §37.01 (5) (1963).

court of record who holds his court forty or more miles from the county seat has misdemeanor trial jurisdiction up to a 100 dollar fine or ninety days imprisonment, or both.[42]

There are also various population acts that pertain only to individual counties.[43] The justice of the peace districts that do not fall under general provisions, but which have misdemeanor trial jurisdiction by special act are:

(a) Collier: The fourth district has been granted misdemeanor trial jurisdiction up to a 250 dollar fine or six-month imprisonment.[44]

(b) Duval: If the defendant waives a jury trial the justice may try misdemeanors as long as the prescribed penalty does not exceed a 500 dollar fine or ninety days imprisonment, or both. Narcotic charges and driving while intoxicated are specifically excluded from their jurisdiction. If the defendant demands a jury trial, he must be bound over to the criminal court of record.[45]

(c) Hillsborough: In addition to their general statutory jurisdiction (100 dollars or three months), the justices are designated presiding officers of the traffic courts. In this role, they have jurisdiction over traffic offenses so long as the penalty does not exceed a 500 dollar fine or six months imprisonment.[46]

(d) Manatee: In 1945, the justice of the peace was granted trial jurisdiction in misdemeanors if the penalty did not exceed a 100 dollar fine or ninety-days imprisonment.[47] Since then, the population has risen to more than 50,000 and a county court was created, so the justice's jurisdiction is now regulated by the general statute.

(e) Orange: The general statute gives the justices trial jurisdiction as long as the penalty does not exceed 100 dollars or three months.[48] In 1961, the justices were granted trial jurisdiction over all traffic misdemeanors committed in their respective districts if the defendant either pleads guilty or waives his right to jury trial.[49]

(f) Pasco: Trial jurisdiction over misdemeanors is granted to the justice of the peace court if the defendant pleads guilty and the maximum fine does not exceed 500 dollars.[50]

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42. FLA. STAT. §37.24 (1) (1963).
43. The population brackets used in the acts are designed to encompass a single county.
44. Fla. Laws 1953, ch. 28545.
45. Fla. Laws 1961, ch. 61-1352.
46. Fla. Laws 1951, ch. 27104.
47. Fla. Laws 1945, ch. 23394.
48. FLA. STAT. §37.01 (3) (1963).
49. Fla. Laws 1961, ch. 61-1353.
50. Fla. Laws 1963, ch. 63-1763.

(g) St. Johns: Trial jurisdiction over misdemeanors is provided for the justices if the punishment involved does not exceed 500 dollars or six months.[51]

This list does not include any special or population acts passed by the legislature that have failed to win voter approval. The table in Appendix I will be helpful to summarize criminal jurisdiction.[52] Hamilton, Lafayette, and Union Counties have been omitted because they have no elected justices.

PROCEDURE

The justice of the peace courts are subject to the rules of procedure as promulgated by the Supreme Court.[53] Final appellate jurisdiction from these courts is vested in the circuit courts and criminal appeals may be tried de novo under regulations established by the legislature.[54] The chief justice of the Supreme Court is given authority to temporarily assign justices to other justice districts or to courts of lesser jurisdiction.[55]

Each elected justice is required to take an oath,[56] post bond,[57] provide himself with a seal[58] and maintain a docket book.[59] Justices may designate their own trial term,[60] and when the day of the trial is fixed they must file written notice of this date with the clerk of the circuit court.[61]

Civil. Chapter 37 of the Florida Statutes also sets forth certain rules specifically governing the civil procedure to be utilized in the justice of the peace courts. All civil actions, except those based on the common counts,[62] are commenced by a summons issued by the justice.[63] In these suits, the rules of pleading and practice require that there be at least two rule days each month.[64] Summonses are served by the

51. Fla. Laws 1961, ch. 61-1052.
52. FLA. STAT. Table of Courts (1963).
53. FLA. CONST. art. V, §3.
54. FLA. CONST. art. V, §11 (2).
55. FLA. CONST. art. V, §2.
56. FLA. STAT. §37.09 (1963).
57. FLA. STAT. §§37.10, .11 (1963).
58. FLA. STAT. §37.12 (1963).
59. FLA. STAT. §37.15 (1963).
60. *Ibid.*
61. FLA. STAT. §§145.14, 81.26 (2) (1963). FLA. STAT. §37.14 (1963).
62. FLA. STAT. §81.12 (1963). ["A]ctions for goods sold, work and material, money lent, money paid, money received, accounts stated and for hire of goods and property, shall be commenced by the claimant filing . . . an itemized statement verified by affidavit."
63. FLA. STAT. §81.01 (1963).
64. *Ibid.*

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executive officer of the court or, in his absence, by a person appointed in writing.[65] The defendant may offer to confess judgment before answering,[66] and all trials are conducted without a jury unless either party demands one and makes a sufficient money deposit to defray its cost.[67] If the prevailing party demands, a justice must deposit a transcript of the judgment with the clerk of the circuit court.[68] When appropriate, the justice has power to grant new trials in cases he has tried.[69]

Criminal. Chapter 937 of the Florida Statutes provides the procedures to be followed in criminal actions. The accusatorial writ prescribed is the affidavit, which is based upon a complaint made by any person.[70] When so used, the affidavit becomes, in effect, an information relating the state's charge against the defendant. Because no prosecutor is provided for this court, the complaint is initially related to the justice, who is necessarily exposed, before trial, to all the complainant's testimony concerning the particular incident, which sometimes includes ordinarily inadmissible testimony. This same justice, while acting as prosecutor on the basis of the affidavit that he assisted in filing, is expected to preside impartially as judge over the proceedings. The possibility of unjust treatment and prejudice becomes manifest under this procedure.

Each justice is required to enter the following in his docket book: the title of all criminal cases brought before him; the date when process was first issued, answered, and returned; all adjournments; the time and manner of the trial or other disposition of the case; the judgment and sentence, including the costs; and names of all witnesses and jurors.[71] This docket book may be inspected by the sheriff and his deputies, the clerk of the circuit court, county commissioners, and state attorneys.[72] The various fines the justice imposes under the penal laws, along with all proceeds from forfeited bonds and recognizances, are required to be paid into the fine and forfeiture fund of the county wherein the affidavit was filed or the prosecution commenced.[73] Judgment for such fines must be entered in favor of the state for use of that particular county.[74] The justices are required

65. FLA. STAT. §81.02 (1963).
66. FLA. STAT. §§81.04, .11 (1963).
67. FLA. STAT. §81.07 (1963).
68. FLA. STAT. §81.21 (1963).
69. FLA. STAT. §81.20 (1963).
70. FLA. STAT. §937.02 (1963).
71. FLA. STAT. §937.18 (1963).
72. FLA. STAT. §937.19 (1963).
73. FLA. STAT. §142.03 (1963).
74. *Ibid.*

to submit a full report to the board of county commissioners for each month, within thirty days after expiration of the month, reciting the amount of fines imposed by the reporting justice, bonds forfeited, judgments rendered on forfeited bonds, and the name of the person making collections on the bonds.[75] The date of conviction, term of imprisonment of each defendant, and the name of the officer to whose commitment he was delivered must be included.[76]

INQUESTS

Article 5, section 11, of the Florida Constitution provides that justices of the peace, acting as coroners, have the authority to conduct inquests of the dead. The Florida Statutes set out the rules and procedures to be adhered to in such proceedings, specifically providing when inquests are to be held.[77] All inquests must be open to the public[78] and, if the justice cannot hold it, then it becomes the duty of the county judge or a justice from an adjoining district to do so.[79]

There is a great deal of criticism, principally from the medical profession, directed to this coroner system. Suffice it to say, the advisability of any medically untrained person or persons determining cause of death, with or without medical testimony, is highly questionable. A more enlightened procedure would be to allow a qualified medical examiner to conduct all inquests.

THE OFFICE OF JUSTICE OF THE PEACE

It is constitutionally provided that a justice, being a state officer, may hold no other state office concurrently;[80] however, the attorney general has advised that an elected justice may serve in a municipal position, such as mayor, during his term as justice of the peace.[81] Further 1959 legislation in Pinellas County authorizes the justice to wear two hats by being allowed to serve additionally as judge of the small claims court.[82] The supreme court recently held this legislation constitutional.[83] Prior legislation in that county had authorized his position as judge of the county district court[84] and this authoriza-

75. *Ibid.*
76. *Ibid.*
77. FLA. STAT. §936.02 (1963): basically when the death is violent or sudden and there are no eyewitnesses to the cause of death.
78. FLA. STAT. §936.021 (1963).
79. FLA. STAT. §936.01 (1963).
80. FLA. CONST. art. XVI, §15.
81. OPS. ATT'Y GEN. FLA. 057-141 (1957).
82. Fla. Laws 1959, ch. 59-552.
83. Miller v. Davis, 174 So. 2d 8 (Fla. 1965).
84. Fla. Laws 1959, ch. 59-552.

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tion is presently being utilized in some instances since the judge of the district court is empowered to appoint a prosecutor.[85]

Justices are automatically removed from office upon conviction of any offense against Florida's penal laws.[86] Also, they may be suspended for misfeasance, malfeasance, nonfeasance, drunkenness or incompetency provided the senate consents to their removal.[87]

As of January 1965, the secretary of state lists 113 elected justices in Florida.[88] Volusia County has the greatest number, with twelve justices presently active.[89] There is no discernible correlation between the number of justices authorized in a particular county and its population. For instance, the ratio of justices to people served ranges from one to approximately every 190,000 persons in Hillsborough County to one for each 1,600 persons in Liberty County.[90]

The Florida Constitution prescribes no specific qualifications for those seeking the office of justice of the peace. Nevertheless, it is said to be a rule of universal application that a person must be at least twenty-one years of age to qualify[91] and the Florida Supreme Court has ruled that he must reside in the district which he serves.[92] The noted absence of educational qualifications in all counties with the exception of Hillsborough[93] and Pinellas,[94] where bar membership is required, has evoked a substantial portion of the criticism of the justice of the peace courts. This criticism appears to be well founded in an era where respect for law and the administration of justice is sorely needed. It seems to be rather difficult for the public to hold any great respect for these courts when an untrained and often uneducated justice, clothed with the state's judicial authority through a usually uncontested election, is presiding over important legal matters and controversies. In handling criminal and civil cases, it is reasonable to assume that they will involve technical evidentiary questions, which the untrained person will not even recognize, let alone make accurate and just rulings based on the ever-changing case law.

The argument often heard in defense of this situation is that the appellate procedure will detect and correct any fundamental denial

85. St. Petersburg [Fla.] Times, May 3, 1965, §B, p. 3.

86. FLA. STAT. §81.30 (1963).

87. FLA. CONST. art. IV, §15; FLA. STAT. §§142.03, 932.40 (1963).

88. List of justices of the peace as compiled by the office of the Fla. Secretary of State, Jan. 1965.

89. *Ibid.*

90. Based on number of active justices in the county divided into the 1960 federal census of the respective counties.

91. 31 AM. JUR. *Justices of the Peace* §9 (1940).

92. Conyers v. State, 98 Fla. 417, 123 So. 817 (1929).

93. Fla. Laws 1963, ch. 63-959.

94. Fla. Laws 1961, ch. 61-647.

of basic rights. This argument has no validity. The vast majority of litigants and accused have neither the knowledge nor the funds to prosecute an appeal. Justice either stands or falls to these persons upon the pronouncements of an uneducated and often uninformed "judge." An additional argument by those defending the system is that in some counties there are no resident attorneys and, merely because a county is too small or too rural to support a law practice, it should not be denied the convenient, inexpensive service that the justice of the peace court provides. Such an argument has merit if the imposition of qualifications, which cannot be met by its residents, actually precludes the county from having its own inferior court system. Indeed, this problem was recognized by the Florida Judicial Council in its court revision program,[95] which suggested a merger of the justice of the peace court with the existing small claims and magistrate courts. The Council proposed the requirement of bar membership for the merged inferior courts only for counties over 50,000 population, in recognition of the onerous aspects of bar membership on the smaller counties. The Council stated:[96]

> Originally the Council recommended that bar membership be required for all county judges and that it be left to the Legislature to impose the same requirement for judges of the small claims and magistrate courts, on a county by county basis. It was protested, however, that this requirement was not realistic as applied to those Florida counties in which there as few if any resident attorneys and that this was a matter better left for subsequent legislation action.
>
> On reconsideration of the matter the Council concluded . . . that bar membership . . . might best be left for future legislative imposition in the more thinly populated counties.

In view of the Council's seven years of intensive and exhaustive work on the reorganization of Florida's court system, it would be presumptuous indeed to question its findings and suggestions. It is believed, however, that the qualifications presently demanded for the judges of other existing inferior courts of Florida with similar jurisdiction to that of the justice of the peace courts may be of interest.

The small claims courts, established under the general laws of the state, have civil jurisdiction comparable to the justice of the peace courts. Florida Statutes, chapter 42, requires the judges of this court to be members of the bar.[97] Notwithstanding the fact that this re-

95. See APPENDIX III for full text of provisions applicable to justice of the peace courts.

96. *Id.* at §8.

97. FLA. STAT. §42.04 (1963).

quirement may be, and has been, changed by local law in some instances, twenty-one of the counties under 20,000 population, including ten counties under 10,000 population, presently retain the bar membership requirement for these judges.[98] Furthermore, judges of the various municipal courts, many of which have criminal jurisdiction corresponding to the justice of the peace court,[99] are often required to be attorneys.[100] Of the forty-eight counties that maintain municipal courts, six with fewer than 20,000 population have attorneys serving in this capacity.[101]

In some states a manual or handbook is available for the justices of the peace,[102] perhaps because of the realization that they often lack formal training or experience in legal matters. Such manuals set forth in hornbook fashion the jurisdiction, procedure, and related duties of the justice of the peace. Definitions of legal terminology and applicable statutory sections concerning matters with which the justice will be dealing are also included. This text is undoubtedly valuable to the newly-elected justice who faces his job without legal experience, as well as to the more seasoned justice who may find a need for information concerning unfamiliar points of law or procedure. Unfortunately, Florida has no such text available for the justice of the peace, except an obsolete compilation of the Florida Statutes applicable to justices of the peace and county judges, which was published in 1900.[103] Therefore, the lay justice in Florida assumes the bench armed only with the Florida Statutes, which he must purchase at his expense,[104] and whatever experience he might have.

COMPENSATION

General state-wide law provides that the justices be compensated from amounts collected as fees.[105] Such fees purportedly represent the charge made by the state for service rendered through the justice of the peace to the people. This plan of compensation, universally attacked as pregnant with corruption and discreditable to both the bench and bar, is statutorily modified in Florida by the provision

98. ABA Traffic Court Program, A Study of Florida Courts Trying Traffic Cases 210 (1964).

99. *Id.* at 35.

100. *Id.* at 218.

101. *Ibid.*

102. *E.g.*, EAGER, DENNIS MAGISTRATES' AND JUSTICES' MANUAL (1939); GIBSON, THE OFFICE OF JUSTICE OF THE PEACE IN GEORGIA (1956).

103. RANEY, MANUAL OF THE STATUTES OF FLORIDA APPLICABLE TO JUSTICES OF THE PEACE AND COUNTY JUDGES (1900).

104. OPS. ATT'Y GEN. FLA. 049-225 (1949).

105. FLA. STAT. §§145.14, 81.26 (2) (1963).

that 7,500 dollars is the maximum allowable net income that may be retained annually by the justice from fees collected.[106] Net income as used here refers to the residue of income of the office after deducting all reasonable expenditures for salaries of clerks or assistants and necessary expenditures for operation of the office.[107] Any net income in excess of 7,500 dollars accruing to the justice is classified as excess income and must be paid over to the county.[108] The justices of the peace, as well as all county fee officers, are required to keep a complete record of all receipts and report them annually to the board of county commissioners.[109] The above-mentioned limit on allowable compensation has been modified in some counties by population acts providing a higher maximum limit. It appears from the heavy case load and relatively high quality of the justice of the peace courts in these counties that the extension of the statutory limit is certainly justified. The chart in Appendix II will be helpful in summarizing the compensation of various justices.

Because of the statutory limit on allowable compensation derived from collected fees, the justices in Florida do not have the opportunity to earn 40,000 dollars or 50,000 dollars per year as do the justices in some states with no limit.[110] Nevertheless, the problem of a judge working on a commission basis may in practical effect still exist in the smaller counties. For example, it is entirely possible that in a small county where the justice and his constable have fewer opportunities to exercise their jurisdiction, there may be temptation to be overly aggressive in seeking out the fewer "law violators." The 7,500 dollar limitation becomes meaningless in prevention of this activity because it will, in all probability, never be reached. The only real solution to this problem, which has been adopted in the more enlightened counties, both large and small, is compensation by salary. Such a change was effected for the sheriffs of Florida[111] and is generally agreed to have resulted in a much higher caliber of law enforcement.

In consideration of the believed attitude of a majority of the bench and bar and the voluminous amount of literature concerning the absurdity of the fee system in regard to administration of justice, it seems rather futile to spend further time or space attacking the indefensible.

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106. FLA. STAT. §145.14 (1963).

107. FLA. STAT. §145.021 (1963).

108. Fla. Auditing Department, Florida County Commissioner's Manual 85 (1958).

109. FLA. STAT. §145.12(1) (1963).

110. See The "J.P.": Should He Be Abolished, Saturday Evening Post, Oct. 11, 1958, p. 19.

111. FLA. STAT. §30.48 (1963).

LEGISLATIVE REGULATION

As may be surmised from the foregoing explanation, Florida presently has a decentralized structure of individually autonomous justice of the peace courts. There are many factors which contribute to produce this hodge podge. The impractibility of true general legislation for purely local problems of the justice of the peace courts and the consequent passage of population acts, usually applicable to only one county, is one such factor. Population acts purporting to be general rather than expressly local or special are necessarily utilized to avoid the constitutional mandate that states: "The Legislature shall not pass special or local laws . . . regulating the jurisdiction of any class of officers . . . regulating the courts of justice . . . regulating the fees of officers of the State and county."[112]

On occasion the designation of these population acts as general in application has been contested. In such instances the Florida Supreme Court has often upheld the questioned designation based on a finding that the population brackets are reasonable and potentially broad enough to include more than one county.[113] This line of reasoning assumes that there is a unique need for the particular legislation for all counties falling within the population brackets, which, of course, disappears when the county's population growth takes it out of the bracket.

A cursory search of the compiled Laws of Florida for the past fifteen years reveals many population acts regulating justice of the peace courts that, by any reasonable interpretation, are of doubtful general application and therefore may be violative of the aforementioned provision.[114] Nevertheless, inasmuch as the court must view any population act independently to determine whether it is sufficiently general in application to withstand constitutional attack, each act must be challenged separately. Because of the lack of interest and the question of standing to bring suit in regard to justice of the peace courts, this has rarely been done. This point is noted only in passing since no attempt is made to examine in any detail the Florida Constitution or the legislative techniques of circumventing it. The brief discussion should, however, indicate the means and methods producing the voluminous amount of legislation regulating these and other courts in Florida.

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112. FLA. CONST. art. III, §20.

113. See Miller v. Davis 174 So. 2d 8 (Fla. 1965).

114. *E.g.*, Fla. Laws 1953, ch. 28320 using brackets of between 23,625 and 24,500. At the time this law was passed Duval County had a population of 23,653 and Putnam and St. Johns Counties had populations of 23,615 and 24,998 respectively; Fla. Laws 1963, ch. 63-936 using brackets of between 30,500 and 32,500 intended for Putnam County (population 32,212).

THE JUSTICES' VIEW

As previously mentioned, the research for this note included a questionnaire mailed with a return addressed envelope to each justice appearing on the secretary of state's list, which list 113 justices elected in thirty-nine counties. Forty-eight justices, representing twenty-seven counties, answered the questionnaire. In round percentage figures, forty-one per cent of the total number of justices, representing sixty-nine percent of the counties maintaining the justice of the peace courts, returned the questionnaire. Both the answers to the specific questions solicited, which indicated tremendous variance between particular districts in respect to case load, courtroom facilities and jurisdiction, and the general comments and criticisms of the court, are symptomatic of its patchwork structure in this state. Accordingly, meaningful macroscopic analysis of the system's effectiveness is not possible. It is believed, however, that benefit may be derived from examination of the justice's views regardless of the great differences in the respective districts represented. The following chart categorizes, on a percentage basis, the recurring comments received.

	Percent
No change desired	12.5
Raise limit on allowable fees	10.4
Desires more civil jurisdiction	18.7
Abolish the justice of the peace court	6.4
Merge with another inferior court	6.2
Reduce the number of courts in the county	6.2
Abolish role as coroner	6.2
No comment	25.0
Other	8.4

As is obvious, most of these comments are concerned with situations peculiar to particular counties and involving primarily the money-making capacity of the justices rather than constructive suggestions in regard to the quality of the court, and accordingly will not be discussed.

In addition to these remarks, many of the justices, in a somewhat defensive manner, took the opportunity afforded by the questionnaire to voice arguments in support of the system generally. The argument most frequently asserted is one the authors term the "grass roots" argument, whereby the proponents of the system cite the closeness of the justice to the people, his understanding of the less serious conflicts and problems occurring in the community, and the convenience and inexpensive service the court affords citizens of the district. Implicit in this argument is the idea that the justices are unhampered

by legal formalism and procedure, thus enabling them to make their decisions on notions of fair play and basic justice. It is said that he often solves neighborhood litigation that would be an added burden on the congested dockets of the higher level trial courts. From a general public policy standpoint these features are certainly desirable; however, they are believed to exist in any inferior court system and are not exclusively applicable to the justice's court. In no way does this argument meet the barrage of criticism directed specifically to the system in respect to educational requirements, the fee system, and lack of effective jurisdiction.

Conclusion

In the foregoing text, an attempt has been made to succinctly delineate the status of the justice of the peace court along with appropriate comments on apparently unfavorable aspects of the court's structure and practice. It is believed that a short summary of the comments made will underscore the more important areas and lend some appearance of continuity to the exposition.

(1) A little over one-third of Florida's counties presently retain this inveterate court system. Along with legislative abrogation, a back door abolishment of the justice's court has occurred in some instances through the election of a candidate who promises not to act.

(2) The civil jurisdictional limit of 100 dollars renders the court useless, in many counties, in the disposition of its ever increasing civil litigation.

(3) In the criminal area, prosecutors are sorely needed to prevent the justice from being placed in the awkward and unjust position of prosecutor and judge.

(4) In his role as coroner, the justice probably finds himself less qualified than in any other capacity in which he is required to perform. Certainly in light of the scientific complexity of pathology and the importance of accurate conclusions as to the cause of death, the task of coroner should be assigned to a medically trained examiner.

(5) The astounding absence of educational qualifications for the office of justice of the peace engenders disrespect and suspicion of the court in the public's mind, as does the often contaminated fee system of compensation. The predicament of an untrained and uneducated judge working on a commission should be corrected with expedition by an informed citizenry and responsible bar that are concerned about the esteem in which the courts of the state are held. Indeed, even the justices who are not

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attorneys recognize the urgent need for the imposition of reasonable qualifications and abolishment of the fee system.

(6) The constitutional situation in Florida, prohibiting legislative changes to meet jurisdictional exigencies, is the main factor producing the proliferation of courts and lack of uniformity in the existing inferior courts. Furthermore, a substantial amount of local legislation, in the form of nominally general population acts, is passed each year in disregard of constitutional prohibition regulating courts of county-wide jurisdiction, which serves to perpetuate nonintegration.

Following some seven years of exhaustive research and planning, a courageous effort to unify the state's judicial system and solve its constitutional problems was made by the Florida Judicial Council. The Council introduced a constitutional amendment in the 1961 Legislature, which would have completely revised the judicial structure of the state, reducing the number of courts from thirteen to four.[115] With a thorough scheme of control and responsibility to one authority within each of the four court systems, provision was made for legislative addition of judges to these four courts when the need arose, thus alleviating the necessity of creating new and autonomous courts by constitutional amendment as is presently done. In dealing with the state's inferior courts, the Council proposed a merger of the justice of peace and small claims courts. The court resulting from the merger, the small claims and magistrates' court, was initially afforded civil jurisdiction over matters involving sums less than 500 dollars; and criminal jurisdiction over all nonfelony crimes. The judge of this court was also given jurisdiction as a committing magistrate. The fee system of compensation was replaced by salary for the judges of this court. Judges in counties over 50,000 in population were required to be members of the bar. Uniformity, coordination, and above all, flexibility were the underlying goals of the council's program. The ingenuity and simplicity of the plan made it most adaptive to the state's large geographic area with its diffused concentrations of population.

As with any such sweeping change, however, the effect on the persons involved with the abolished and merged courts and various vested interests was thought by them to be substantially adverse; consequently, their influence was successfully exerted in killing the proposal in legislative committee. This defeat precluded any vote on the amendment by the people.

In view of the council's plenary solution to the problems of the justice of the peace court, incident to the well integrated revision

115. See APPENDIX III.

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proposal, and the author's refusal to advocate change by means other than constitutional, novel solutions to the problems discussed will not be advocated. The Council approached the task in the only proper manner, propounding a most effective and workable plan. No attempt will be made to improve upon it.

It is hoped, nonetheless, that the pressing problems indicated herein will be kept in mind in the future when an enlightened legislature becomes more responsive to the urgent needs of the state's judicial structure.

RONALD C. LAFACE

THOMAS G. SCHULTZ

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APPENDIX I

SUMMARY OF CRIMINAL JURISDICTION

County	Population 1960 Census	Criminal Court of Record*	County Court*	Criminal Jurisdiction
Baker	7,363	No	No	Committing magistrate only
Charlotte	12,594	No	Yes	Committing magistrate only
Citrus	9,268	No	No	Committing magistrate only
Clay	19,535	No	No	Committing magistrate only
Collier	15,753	No	No	Committing magistrate only
District 4				$250 or 6 months, or both[116]
Columbia	20,077	No	No	Committing magistrate only
Dade	935,047	Yes	No	Committing magistrate only
Duval	455,411	Yes	No	$500 or 90 days if defendant waives jury trial[117]
Escambia*	173,829	Yes	No	$500 or 6 months
Flagler	4,566	No	No	Committing magistrate only
Gadsden*	41,989	No	Yes	$100 or 3 months[118]
Hendry	8,119	No	No	Committing magistrate only
Hernando	11,205	No	No	Committing magistrate only
Hillsborough	397,788	Yes	Yes	(a) $100 or 3 months[119] or (b) $500 or 6 months in traffic misdemeanors, or both[120]
Jackson	36,208	No	No	Committing magistrate only
Jefferson	9,543	No	Yes	Committing magistrate only
Lee	54,539	No	Yes	$100 or 3 months[121]
Liberty	3,138	No	No	Committing magistrate only
Madison	14,154	No	Yes	Committing magistrate only
Manatee	69,168	No	Yes	(a) $100 or 3 months[122] (b) $100 or 90 days[123]
Martin	16,932	No	Yes	Committing magistrate only
Monroe	47,921	Yes	No	Committing magistrate only
District 3				$100 or 90 days, or both[124]
Nassau	17,189	No	No	Committing magistrate only
Okaloosa	61,175	No	No	$500 or 6 months[125]

116. Fla. Laws 1953, ch. 28545.
117. Fla. Laws 1961, ch. 61-1352.
118. FLA. STAT. §37.01 (4) (1963).
119. FLA. STAT. §37.01 (3) (1963).
120. Fla. Laws 1951, ch. 27104.
121. FLA. STAT. §37.01 (3) (1963).
122. *Ibid.*
123. Fla. Laws 1945, ch. 23394.
124. FLA. STAT. §37.24 (1963).
125. FLA. STAT. §37.01 (2) (1963).

County	Population 1960 Census	Criminal Court of Record*	County Court*	Criminal Jurisdiction
Orange	263,540	Yes	Yes	(a) $100 or 3 months[126] (b) Traffic misdemeanors if defendant pleads guilty and waives jury trial[127]
Osceola	19,029	No	Yes	Committing magistrate only
Pasco*	36,785	No	Yes	(a) If defendant pleads guilty up to $500[128] (b) $100 or 3 months[129]
District 3				$100 or 90 days, or both[130]
Pinellas	374,665	Yes	No	$500 or 6 months, or both[131]
Polk*	195,139	Yes	Yes	$100 or 90 days[132]
Putnam	32,212	No	No	Committing magistrate only
St. Johns	30,034	No	No	$500 or 6 months[133]
St. Lucie*	39,294	No	Yes	$100 or 3 months[134]
Sarasota*	76,895	No	Yes	$100 or 3 months[135]
Seminole	54,947	No	Yes	$100 or 3 months[136]
Sumter	11,869	No	Yes	Committing magistrate only
Suwanee	14,961	No	No	Committing magistrate only
Taylor	13,168	No	No	Committing magistrate only
Volusia	121,319	No	No	$500 or 6 months[137]
Walton	15,576	No	No	Committing magistrate only

*As shown in Table of Courts, 3 FLA. STAT. 88-105 (1963).
Caveat: Dispute in some counties regarding jurisdiction.

126. FLA. STAT. §37.01 (3) (1963).
127. Fla. Laws 1961, ch. 61-1353.
128. Fla. Laws 1963, ch. 63-1763.
129. FLA. STAT. §37.01 (4) (1963).
130. FLA. STAT. §37.24 (1963).
131. Fla. Laws 1965, ch. 65-3.
132. FLA. STAT. §37.01 (3) (1963).
133. Fla. Laws 1961, ch. 61-1052.
134. FLA. STAT. §37.01 (4) (1963).
135. FLA. STAT. §37.01 (3) (1963).
136. *Ibid.*
137. FLA. STAT. §37.01 (2) (1963).

APPENDIX II

YEARLY COMPENSATION OF JUSTICES OF THE PEACE IN FLORIDA*

County	Compensation
1. Baker	*
2. Charlotte	*
3. Citrus	*
4. Clay	*
5. Collier	Salary of $9,000[138]
6. Columbia	*
7. Dade	Set by county commission[139]
8. Duval	Fee ceiling of $9,000[140]
9. Escambia	Salary of $8,000[141]
10. Flagler	*
11. Gadsden	*
12. Hendry	*
13. Hernando	*
14. Hillsborough	
District 1	Salary of $15,000[142]
District 2	Salary of $14,500
15. Jackson	*
16. Jefferson	*
17. Lee	*
18. Liberty	Salary of $600[143]
19. Madison	*
20. Manatee	
District 1	Salary of $5,500[144]
District 6	Salary of $6,500
Others	Salary of $1,200
21. Martin	*
22. Monroe	
District 1	Salary of $4,200[145]
District 2	Salary of $4,200[146]
District 4	Salary of $2,700[147]
23. Nassau	*
24. Okaloosa	
Districts 3 and 6	Salary of $5,200[148]
25. Osceola	*

138. Fla. Laws 1963, ch. 63-720.
139. FLA. CONST. art. VIII, §11.
140. Fla. Laws 1959, ch. 59-797.
141. Fla. Laws 1963, ch. 63-945.
142. Fla. Laws 1963, ch. 63-959.
143. Fla. Laws 1959, ch. 59-779.
144. Fla. Laws 1963, ch. 63-874.
145. Fla. Laws 1963, ch. 63-584.
146. Fla. Laws 1963, ch. 63-585.
147. Fla. Laws 1959, ch. 59-771.
148. Fla. Laws 1963, ch. 63-778.

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County	Compensation
26. Orange	
District 1	Salary of $10,000[149]
District 2	Salary of $9,000
District 3	Salary of $9,000
27. Pasco	$2.50 for each civil suit instituted[150]
28. Pinellas	
District 1	Salary of $11,200[151]
District 2	Salary of $10,200
District 3	Salary of $7,700
District 4	Salary of $7,700
District 5	Salary of $10,200
29. Polk	Flat fee of $5.50 in criminal cases[152]
30. Putnam	Flat fee of $6.50 in criminal or civil[153]
31. St. Johns	*
32. St. Lucie	*
33. Sarasota	$7,500 maximum (fees revised)[154]
34. Seminole	*
35. Sumter	*
36. Suwannee	*
37. Taylor	*
38. Volusia	Flat fee of $6.50 in criminal cases[155]
39. Walton	*

*No special or population legislation has been enacted and the justices of the peace operate on a fee system with $7,500 set as the maximum.

APPENDIX III

JOINT RESOLUTION AMENDING STATE CONSTITUTION

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO ARTICLE V OF THE CONSTITUTION OF FLORIDA RELATING TO THE JUDICIAL DEPARTMENT OF THE GOVERNMENT

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

That Article V of the Florida constitution be amended as set forth below and that said resolution be submitted to the electors of Florida for ratification or rejection at the general election to be held in November, 1962:

SECTION 8. SMALL CLAIMS AND MAGISTRATE COURTS — The legislature may by special act create or abolish a small claims and magistrate court in any county,

149. Fla. Laws 1963, ch. 63-652.
150. Fla. Laws 1939, ch. 19438.
151. Fla. Laws 1963, ch. 63-667.
152. Fla. Laws 1961, ch. 61-1431.
153. Fla. Laws 1963, ch. 63-936.
154. Fla. Laws 1959, ch. 59-666.
155. Fla. Laws 1961, ch. 61-1646.

or in districts thereof. There shall be at least one judge for each such court. Any act creating or abolishing courts or altering the number of districts shall be subject to a county-wide referendum, and no county shall have more than five districts.

(2) *Jurisdiction.* Judges of small claims and magistrate courts may issue process for the arrest of persons charged with any offense, act as committing magistrates, adjudicate misdemeanor cases, and adjudicate actions at law in which the demand or value of the property involved, exclusive of interest, attorneys' fees and costs, does not exceed such amount as the legislature may provide by general law. Where the amount claimed is within this jurisdictional amount, they may adjudicate actions in distress for rent and actions for removal of tenants for non-payment of rent in which there is no question of title to real property. If trial by jury be demanded by a party to a civil action, he shall deposit such reasonable sum as the judge shall fix to secure the payment of all costs incurred by reason of a jury trial. If trial by jury be demanded in a misdemeanor case, it shall be transferred to the county court for such trial.

The supreme court shall provide by rule for simplified, inexpensive, and expeditious proceedings for all matters within the civil jurisdiction of small claims and magistrate courts.

In such manner and on such conditions as the legislature may prescribe, a municipality may authorize small claims and magistrate courts to issue process and try persons for violations of its ordinances.

(3) *Constables.* The legislature may by special act provide for a constable in any small claims and magistrate court district, provided that any act creating or abolishing the office of constable shall be subject to a county-wide referendum. Each constable shall be elected by the qualified electors of the district he serves in the same manner as other state and county officials to serve a term of four years. He shall perform such duties as prescribed by law and receive such salary as provided by law.

(4) *Name of court.* The legislature may change the name of this class of courts.

SECTION 12. ELIGIBILITY REQUIREMENTS FOR JUSTICES AND JUDGES— (1) All justices and judges must be citizens of the United States and of this state, and no person shall be eligible for the office of: . . . (c) Judge of the county court or small claims and magistrate court in a county having at least 50,000 population according to the last census authorized by law, unless he is and has been for the preceding three years a member in good standing of the bar of Florida and a resident of the county for at least one year.

(2) In any county having less than fifty thousand population according to the last census authorized by law, the legislature may require the judges of the county court and of the small claims and magistrate court to be members in good standing of the bar of Florida.

SECTION 17. JUDICIAL SALARIES AND EXPENSES—All justices and judges shall receive salaries provided by law, and such salaries may be supplemented by any county or counties when authorized by the legislature. In addition, judges of county courts and of small claims and magistrate courts may be compensated for any non-judicial services as may be provided by law. . . .

All judicial officers shall be reimbursed for such actual and necessary expenses as may be authorized by law.

The salaries of judicial officers shall not be diminished during the terms for which they were elected or appointed, unless as part of a general reduction of salaries applying uniformly to all salaried officers and employees of the state.