Cleveland State Law Review

Volume 5 | Issue 2 Article

1956

Oath of Office

William F. Burns

Oath of Office

Judge William F. Burns

AN "OATH" IS DECLARED TO BE THE CALLING UPON GOD to witness that what is said by the person sworn is true. It includes an affirmation and embraces every method whereby the conscience of a witness is obligated to testify to the truth.[1]

The contents of an oath may vary according to the conditions existing at the time the person is sworn. Generally speaking no particular form of words is necessary. In many instances, however, the Ohio code provides what the oath shall contain. These provisions are mandatory and the language of the statute must be strictly adhered to.

Every officer of a municipal corporation, and every employee holding a position upon an annual salary in a municipality,[2] and every person chosen or appointed to any office under the Constitution or laws of the state, and each deputy or clerk of such officer, is required by law to take an oath of office before entering upon the duties of his office.[3]

The state legislature has provided that only certain elected and appointed public officials have the power to administer an oath. Full and plenary powers have been given to municipal judges, clerks and bailiffs of municipal courts,[4] police judges,[5] probate judges,[6] notaries public and clerks of common pleas courts.[7] Limited powers have been given, but only to the extent of carrying out some of their respective duties,[8] to members of many tribunals, commissions, and boards of the city, county and state.

---

* First judge to occupy the bench of the Municipal Court of Euclid, Ohio when it was established on January 1, 1952, and still judge of that court; a graduate of Cleveland-Marshall Law School.

It is the opinion of Judge Burns that too often there is a lack of strict observance of the requirements of an oath of office among some elected and appointed officeholders, and that for this reason the legality of the functions of the offices and the acts of the officeholders could be brought into question. [While this note speaks only of Ohio statutes and cases, it is of course equally pertinent in other jurisdictions.—*Editor.*]

1 30 Ohio Jur. 446.
2 Ohio R. C. 705.28.
3 R. C. 3.22; Ohio Const., Art. XV, Sec. 7.
4 R. C. 1901.14; 1901.31-.32.
5 R. C. 1903.10.
6 R. C. 2101.05.
7 R. C. 147.07.
8 R. C. 2303.07.

Every court has inherent powers to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. Express authority empowering courts to administer oaths in the trial of cases is unnecessary. The power is impliedly in the court, in the trial of cases, to receive the testimony of witnesses under oath. The judge himself in open court may administer an oath, or he may direct anyone in his presence to perform this duty.[9] The power to administer oaths is incidental to no office except the judicial. Unless conferred by statute or the constitution, either directly or impliedly, ministerial officers do not possess that power.

Many elected and appointed officials, and this would include mayors and judges of courts other than municipal, are of the erroneous opinion that by virtue of their office they are empowered to administer an oath.

The failure to administer or take the required oath and lack of authority to administer an oath could result in far reaching consequences and conceivably could be very damaging and embarrassing.

For example, specific provisions of municipal law[10] hold that every elected or appointed city official must take the required oath within ten days after he has been notified of his election or appointment. Failure to take the oath within that time is cause for legislative authority to declare the office vacant.[11] In an early Ohio case, the Supreme Court held that the oath of a judge was a necessary step before he could legally undertake his official duties.[12] Our present laws provide that judges of appeals and common pleas courts, within twenty days after receiving their commissions from the governor, shall take the required oath and transmit a certificate of the oath to the clerk of the common pleas court. If the certificate of the oath is not transmitted to the clerk within the time specified, the office is declared by law to be vacant.[13]

The oath that a justice of the peace takes upon acceptance of his office cannot be subscribed before anyone except the clerk of the court of common pleas or another justice of the peace of

---

9 State v. Townley, 67 Ohio St. 21 (1902).

10 R. C. 731.49.

11 State ex rel. Meyer v. Vest, 13 Ohio L. Abs. 200 (1932).

12 State ex rel. Uriah Loomis v. Lemuel Moffitt, 5 Ohio 359 (1832).

13 R. C. 2701.06.

the county where he resides.[14] A township officer who fails to take the oath of office is deemed to have refused the office and the office is declared vacant.[15] The general provisions of the Ohio code, which would govern in those situations not specifically covered by a particular law, hold that any person elected or appointed to an office who neglects to qualify himself in all respects for the performance of the duties of that office is deemed to have refused that office, and it is declared vacant.[16]

It is a time honored custom and an acceptable and commendable practice for newly elected officials to obtain prominent and respected officials to preside at their public swearing in ceremonies. In some cases a presiding official may not be empowered to administer an oath. The test of his authority lies in express provisions of, or an interpretation of, the statutes. Lack of authority to administer or failure to take the oath may result in legal complications.

To avoid a legal challenge of the right to hold public office or a challenge of the effect of one's official acts, it would seem advisable for every newly elected and appointed officer to confer with the legal advisor of his community.

It may be advisable in some instances, where a certificate of the oath is required to be filed, to have the official act subscribed before an officer who by law has full power to administer oaths.

---

[14] R. C. 1907.08.

[15] R. C. 503.27.

[16] R. C. 3.30.