

MAY 31, 1950.

THE HONORABLE LLOYD B. MARSH,
Secretary of State,
Trenton, New Jersey.

FORMAL OPINION—1950. No. 36.

DEAR SIR:

Receipt is acknowledged of your letter of May twenty-third, in which you request an opinion as to the date on which the term of office of Howard F. Barrett, Judge of the County Court of Morris County, will expire.

It is our opinion that Judge Barrett's term of office will expire on April 1, 1953.

The provisions of the Constitution of 1947 which we deem to be pertinent to the question before us are:

There shall be a County Court in each county, which shall have all the jurisdiction heretofore exercised by the Court of Common Pleas, Orphans' Court, Court of Oyer and Terminer, Court of Quarter Sessions, Court of Special Sessions . . . (Art. VI, Sec. IV, par. 1).

There shall be a Judge of each County Court and such additional Judges as shall be provided by law, and they shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas. (Art. VI, Sec. IV., par. 2).

The Governor shall nominate and appoint, with the advise and consent of of the Senate, . . . the Judges of the County Courts . . . (Art. VI, Sec. VI, par. 1.).

The Judges of the Courts of Common Pleas shall constitute the Judges of the County Courts, each for the period of his term which remains unexpired at the time the Judicial Article of this Constitution takes effect. (Art. XI, Sec. IV, par. 2.)

From the several paragraphs of the Constitution of 1947 above recited it is readily apparent that the framers intended — and there can be no doubt that the people who ratified the instrument so understood it — that a single court of permanent constitutional status in each county, formally denominated the County Court, was to replace the five separate courts (including the Court of Common Pleas) held by the Judges of the Court of Common Pleas, and that the Judges of the Court of Common Pleas were to become, without interruption in term of office, the Judges of the new County Courts.

The framers of the Constitution of 1947 did not expressly designate a number of years as the term of office of Judges of the County Courts appointed after the effective date of the Judicial Article thereof. This we ascribe neither to oversight nor to an intent to leave to the Legislature — which for want of fundamental treatment would have the power to legislate upon the subject—the fixing of such term. As we see it, the term was taken care of in the clause (hereinabove recited) which requires that the Judges of the County Courts “shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas.” (Art. VI, Sec. IV., par. 2.)

In the construction of constitutions, it is necessary, as in the construction of statutes, to collect the sense and meaning of the clause by comparing one part with another, and by considering all the parts as a whole, and not one part as a separate and independent provision bearing no relation to the remainder. The purpose of interpretation is the discovery of the true sense of the form of words which are used, taking all parts into consideration, and, if fairly possible, giving them all effect. The object of interpretive inquiry is the thought which the instrument expresses. (See *State vs. Mursda*, 116 N. J. L. 219; see also *In re an Act Concerning Alcoholic Beverages*, 130 N. J. L. 123.)

In *Marvel vs. Camden County*, 137 N. J. L. 47, the phrase "in the same manner" was construed to be broad enough to comprehend term of office. In that case our Court of Errors and Appeals (1947), reversing our then Supreme Court, said (page 51):

. . . The court construed the word "manner" as meaning "mode of procedure" and as not comprehending term of office. In adopting this construction, we think the court erred and failed to follow the guide to statutory construction . . . When the phrase "in the same manner" is considered in reference to the thrice repeated phrase "for the term of three years" [in the pertinent statutes] it becomes apparent that its meaning is broader than that attached to it by the court below. Unless the phrase is construed broadly enough to comprehend term of office, it is tantamount to a deletion from the statutes of the phrase "for a term of three years."

So, too, with the Constitution of 1947 as regards the term of office of County Court Judges. Taking into consideration all parts of that instrument relating to the organization and plan of the courts, and especially in view of the provision (Art. VI, Sec. VI, par.1) specifying that the mode of procedure for appointing the Justices and Judges of all the constitutional courts (including the County Courts) shall be by the Governor's nomination and appointment with the advice and consent of the Senate, it becomes clear that term of office is comprehended within the phrase "in the same manner" as used in the clause providing that the Judges of the County Courts "shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas."

Accordingly, we proceed to ascertain what provisions controlled "the manner" (other than the mode of procedure) of appointment of Judges of the Court of Common Pleas.

The Constitution of 1844 (as amended) provided, so far as applicable to the question before us, as follows:

They [the Judges of the Court of Common Pleas] shall hold their offices for five years; but when appointed to fill vacancies, they shall hold for the unexpired term only. (Art. VII, Sec. II, original par. 2.)

The commissions for the first appointments of judges of said court shall bear date and take effect on the first day of April next; and all subsequent commissions for judges of said court shall bear date and take effect on the first day of April . . . except commissions to fill vacancies, which shall bear date and take effect when issued. (Art. VI, Sec. VI, par. 2.)

In *Delmar vs. Bergen County*, 117 N. J. L. 377, Mr. Justice Case, speaking for the Court of Errors and Appeals (1936), said (page 384) :

. . . The 1844 constitution originally provided in article VII, section II, paragraph 2, that "judges of the Courts of Common Pleas shall be appointed by the Senate and General Assembly, in joint meeting. They shall hold their offices for five years; but when appointed to fill vacancies they shall hold for the unexpired term only." That paragraph still so reads, but (*Schalk vs. Wrightson*, 58 Id. [N. J. L.] 50), was impliedly repealed *pro tanto* by the 1875 amendment whereby paragraph 1 of the section is made to read: "* * * Judges of the inferior court of common pleas shall be nominated by the governor and appointed by him with the advice and consent of the senate." . . .

Accordingly, the provision that the Judges of the County Court "shall be appointed in the same manner as heretofore provided for Judges of the Court of Common Pleas" is to be read, we think, in the following sense:

The Judges of the County Courts shall hold their offices for five years; but when appointed to fill vacancies they shall hold for the unexpired term only. The commissions for the Judges of said Courts shall bear date and take effect on the first day of April, except commissions to fill vacancies, which shall bear date and take effect when issued. The unexpired term for each office of Judge of the Court of Common Pleas existing on September 15, 1948 shall be deemed to be an unexpired term for the office of Judge of the County Court.

In your letter you indicate that Judge Barrett's nomination was confirmed by the Senate on May 15, 1950. Applying the construction we have hereinabove enunciated, the term involved in this appointment began (according to your letter) on April 1, 1948 for the office of Judge of the Court of Common Pleas but became on September 15, 1948 (when the Judicial Article of the Constitution of 1947 took effect) the unexpired term for the office of Judge of the County Court, such term to expire five years from April 1, 1948. Accordingly, since Judge Barrett's nomination to the office was confirmed as of a date between the beginning of the term and the expiration thereof, he holds the office for the unexpired term only, or until April 1, 1953.

You have called to our attention the ad interim appointment of Judge Albert H. Holland, made on September 15, 1948. This has no bearing whatever on the question, since Judge Holland's period of service as an ad interim appointee merely consumed *pro tanto* a portion of the aforesaid term.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.