TITLE 6

JUSTICES' COURTS AND CIVIL PROCEEDINGS THEREIN

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Chapter 51

1961 REPLACEMENT PART

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ORGANIZATION AND JURISDICTION

51.010 Justice's court defined; no terms of court; court always open for business. A justice's court is a court held by a justice of the peace within the justice of the peace district for which he may be chosen. There are no particular terms of such court, but the same is always open for the transaction of business, according to the mode of proceeding prescribed for it.

51.020 Justice of the peace districts; establishing and modifying boundaries; maximum number of districts. The county court or board of county commissioners of every county may set off and establish, or modify the boundaries of, justice of the peace districts within the county. In every county having a district court no more than five justice of the peace districts shall be set off or established or permitted to remain in existence, and then only outside the county seat. In every county not having a district court no more than six justice of the peace districts shall be set off or established or permitted to remain in existence.

51.030 Justice districts abolished in certain county seats. Each justice district in the county seat in each county having a district court organized under ORS 46.020 or 46.025 is abolished; and all records, registers, dockets, books, papers, pleadings, causes, actions, and proceedings lodged, filed, deposited or pending before justice courts in all county seats aforesaid are transferred to the district court for the county. Such district court shall have the same power and jurisdiction over them as if they had been in the first instance lodged, deposited, filed or commenced therein.

51.040 Criminal jurisdiction over specified crimes. A justice's court has jurisdiction of the following crimes committed or triable in their respective counties:

(1) Larceny, where the punishment may be imprisonment in the county jail or by fine.

(2) Assault, and assault and battery, not charged to have been committed with intent to commit a felony, or in the course of a riot, or with a dangerous weapon, or upon a public officer in the discharge of his duties.

(3) Any misdemeanor defined and made punishable by ORS 164.430.

(4) Any misdemeanor defined and made punishable by ORS 166.120 or 166.130.

(5) Any misdemeanor defined and made punishable by any provision of ORS 164.840, 167.525 and 783.600.

(6) Any misdemeanor defined and made punishable by ORS 453.320 and subsection (9) of ORS 453.990.

51.050 Criminal jurisdiction over misdemeanors for which punishment is limited. In addition to the criminal jurisdiction of justices' courts already conferred upon and exercised by them, justices' courts have jurisdiction of all misdemeanors committed or triable in their respective counties, where the punishment prescribed does not exceed three months' imprisonment in the county jail, or a fine of not more than $100.

51.060 Concurrent criminal jurisdiction with circuit courts. Justices of the peace shall have jurisdiction concurrent with the circuit court in addition to the cases already provided by law in all criminal prosecutions arising under ORS 163.490, 260.730, 279.312 to 279.318, 279.338, 279.510 to 279.518, subsection (2) of ORS 279.990, subsections (1) and (2) of ORS 652.990, subsections (1), (2) and (5) of ORS 653.990 and subsections (2), (3) and (4) of ORS 659.990. [Amended by 1957 c.644 §27]

51.070 Crimes "triable" in justice's court. A crime is triable in a justice's court when by the provisions of ORS 131.210 to 131.390 an action may be commenced therefor in the county where such court is held.

51.080 Civil jurisdiction, generally. A justice's court has jurisdiction, but not exclusive, of the following actions:

(1) For the recovery of money or damages only, when the amount claimed does not exceed $250.

(2) For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed $250.

(3) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $250.

(4) Also, to give judgment without action, upon the confession of the defendant for any of the causes specified in this section, except for a penalty or forfeiture imposed by statute.

51.090 Civil jurisdiction not to extend to certain actions. The jurisdiction conferred by ORS 51.080 does not extend, however:

(1) To an action in which the title to real property shall come in question.

(2) To an action for false imprisonment, libel, slander, malicious prosecution, criminal conversation, seduction, or upon a promise to marry.

51.100 Where action may be commenced in civil cases. In an action to recover a penalty or forfeiture given by statute, the cause of action, or some part thereof, must have arisen within the county where the action is commenced, or upon a lake, river or other water bordering upon such county and opposite thereto; but otherwise than this the jurisdiction of a justice's court does not depend upon where the cause arose; provided, that the plaintiff or defendant shall reside in the district where the action is commenced, or personal service can be had on the defendant in any district in the county; and further provided, that in counties having a population exceeding 80,000 inhabitants, no action in a justice's court shall be commenced except in the district where the defendant resides or may be found, and if the defendant does not reside in the state the action may be commenced in any justice district in the state; provided, however, that where the plaintiff and defendant reside in the same justice of the peace district having a population of 5,000 or more and where there is a duly qualified and acting justice of the peace, the action shall be commenced in that district.

51.110 Records and files of a justice's court. The records and files of a justice's court are the docket and all papers and process filed in or returned to such court, concerning or belonging to any proceeding authorized to be had or taken therein, or before the justice of the peace who holds such court.

51.120 Character of docket and entries to be made therein. The docket of a justice of the peace is a book in which he must enter:

(1) The title of every action or proceeding commenced in his court or before him, with the names of the parties thereto and the time of the commencement thereof.

(2) The date of making or filing any pleading.

(3) An order allowing a provisional remedy, and the date of issuing and returning the summons or other process.

(4) The time when the parties or either of them appears, or their failure to do so.

(5) Every postponement of a trial or proceeding, and upon whose application, and to what time.

(6) The demand for a jury, if any, and by whom made; the order for a jury, and the time appointed for trial.

(7) The return of an order for a jury, the names of the persons impaneled and sworn as a jury, and the names of all witnesses sworn, and at whose request.

(8) The verdict of the jury, and when given; and if the jury disagree and are discharged without giving a verdict, a statement of such disagreement and discharge.

(9) The judgment of the court, and when given.

(10) The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking, and the justification of the sureties.

(11) Satisfaction of the judgment or any part thereof.

(12) A memorandum of all orders relating to the admission of bail, taking bail, or commitment for want thereof.

(13) All other matters which may be material or specially required by any statute.

51.130 Disposition of docket and files; docket and files are public writings. The docket and files of a justice's court are to be safely and securely kept by the justice of the peace, and by him forthwith delivered to his successor in office. When any justice's court is abolished, the docket and files of that court shall be turned over to the clerk of the district court, if there is one, otherwise to the county clerk. Such docket and files are public writings.

51.140 Office, courtroom and clerical assistance; books, office equipment and supplies. The county court or board of county commissioners of the county in which the justice of the peace has been elected or appointed:

(1) May provide for the office of the justice of the peace the office and courtroom and clerical assistance necessary to enable the justice of the peace to effectuate the prompt, efficient and dignified administration of justice.

(2) Shall provide for the office of the justice of the peace:

(a) The books, records, forms, papers, stationery, postage and office equipment and

supplies necessary in the proper keeping of the records and files of the judicial office and the transaction of the business thereof.

(b) The latest edition of the Oregon Revised Statutes and all official materials published from time to time to supplement such edition.

[Amended by 1955 c.448 §1; 1957 c.180 §1]

51.150 to 51.200 [Reserved for expansion]

JUSTICES OF THE PEACE

51.210 Each district to elect one justice. Each justice of the peace district shall elect one justice of the peace, who shall hold his office for six years and until his successor is elected and qualified.

51.220 Justices may be district judges temporarily in county seats where justice districts abolished. A justice of the peace in a justice district abolished by ORS 51.030 shall be the judge of the district court created by ORS 46.020 or, if he is qualified to be a judge of the district court, by ORS 46.025 during the remainder of his elective term, or until his successor is elected and qualified.

[Amended by 1961 c.724 §25]

51.230 At what election justice to be elected. The general election at which a justice of the peace shall be elected shall be the election next preceding the expiration of the term of the incumbent of the office.

51.240 Qualifications for office. A person shall not be eligible to the office of justice of the peace unless he is a citizen of the United States and an elector of the county, and for a period of not less than six months next preceding his election has been, and then is, a resident of the district wherein he is elected.

51.250 Time when term begins; filing certificate of election, oath of office and undertaking. The term of office of a justice of the peace shall commence on the first Monday in January next following his election. Before entering upon the duties of his office, the person elected thereto shall qualify by filing with the county clerk of the county wherein he is elected:

(1) His certificate of election.

(2) An oath of office, by him subscribed, to the effect that he will support the Constitution of the United States and the Constitution of Oregon and will faithfully and honestly demean himself in such office.

(3) Also an official undertaking, duly approved by the county court or board of county commissioners in the penal sum of $2,500; provided, that the official undertaking of a justice of the peace in any district in which is located the county seat, or any part thereof, shall be in such greater penal sum, not exceeding $10,000, as the court or board shall designate.

51.260 Filling vacancy; temporary appointment; appointment during justice's vacation. (1) Except as provided in paragraph (b) of subsection (1) of ORS 46.026, if a vacancy occurs in the office of justice of the peace, the Governor immediately shall appoint some person possessing the qualifications for election to that office to fill the vacancy until the next general election and until such appointee's successor is elected and qualified. The person appointed to fill the vacancy shall qualify in the same manner as a person elected to the office.

(2) In the event of a temporary absence or other incapacity of a justice of the peace, the county court, if it deems it in the public interest, may appoint a person possessing the qualfications for election to such office to serve as justice of the peace pro tempore during such absence or incapacity but not for a period to exceed 60 days.

(3) In the event of a temporary absence of a justice of the peace for a period of more than 60 days, or in the event of his inability for a like period to act by reason of illness or other cause, the Governor, if he deems it necessary in the public interest that a person be appointed to fill such temporary vacancy, shall appoint some person possessing the qualifications for election to such office to fill the temporary vacancy.

(4) The person appointed by the county court or Governor pursuant to subsection (2) or (3) of this section immediately shall qualify in the same manner as a person elected to the office, and thereupon shall perform the duties of justice of the peace for the district during the temporary absence or inability. During his temporary tenure, he shall receive the salary that the absent justice of the peace otherwise would have received during the period. When any such appointee has qualified and entered upon the duties of office, his appointment

thereto shall not be revoked or rescinded during the actual trial or hearing of any action or proceeding before him; but the temporary appointment may be terminated at any other time by written notice to that effect given by the appointing authority and filed with the county clerk of the county.

(5) Every justice of the peace is entitled to two weeks paid vacation every year and during such absence the county court may appoint a justice of the peace pro tempore pursuant to the provisions of subsections (2) and (4) of this section.
[Amended by 1961 c.724 §26]

51.270 Form of justice's undertaking. The official undertaking of a justice of the peace shall be in substantially the following form:

Whereas A B has been duly elected justice of the peace in and for the District of _____, in the County of _____, at an election held on the _____ day of _____, 19__, we, C D and E F, hereby undertake that if A B shall not faithfully pay over according to law all moneys that shall come into his hands by virtue of such office, then we, or either of us, will pay to the State of Oregon the sum of $_____.

C D.
E F.

51.280 Qualifications of sureties; filing justification. The sureties in the undertaking provided for in ORS 51.250 shall have the qualifications of bail and shall be residents of the county, and their justification must be filed with the undertaking.

51.290 [Repealed by 1953 c.306 §18]

51.300 [Reserved for expansion]

51.310 Schedule of fees; payment of fees to county treasurer. The justice of the peace shall collect, in advance except in criminal cases, and issue receipts for, the following fees:

(1) For the first appearance of the plaintiff $3.00

(2) For the first appearance of the defendant 1.50

(3) For taking an affidavit of a private party ..... .25

(4) For taking depositions, for each folio ..... .25

(5) For supplying to private parties copies of records and files:

(a) If prepared by the justice of the peace, for each folio ..... .10

(b) If not prepared by the justice, but by him compared, for each folio not less than 5 cents nor more than 10 cents, to be determined by the justice, depending upon the accuracy of the copy.

(6) For each official certificate..... .50

(7) For taking and certifying for a private party an acknowledgment of proof of any instrument 1.00

(8) For performing a marriage ceremony, and making a return thereof 5.00

(9) Costs in criminal cases, where there has been a conviction, or upon forfeiture of bail 4.50

Not later than the fifteenth day of the month following the month in which such fees are collected, the justice of the peace shall pay all such fees, other than those for performing marriage ceremonies, over to the county treasurer of the county wherein he was elected or appointed, for crediting to the general fund of the county, and shall take the receipt of the treasurer therefor.

51.320 to 51.330 [Reserved for expansion]

51.340 Monthly report of fines collected. Justices of the peace in each county shall report to the county treasurer once in each month the amount of all fines collected by them, from whom collected, and what the fine was for, and at the same time pay to the county treasurer in money the full amount of the fines collected. If the justices of the peace have collected no fines, they shall report that fact to the county treasurer.

51.350 Reports in Multnomah County of fines, forfeited bails and commitments. Each justice of the peace in Multnomah County at the close of business of each month shall make a certified report to the county auditor of all fines and forfeited bails collected by him, and all commitments to the county jail during the month, showing the names of all persons committed, and the date and term of sentence.

51.360 Reports in Clackamas County of fines, forfeited bails and commitments. Each justice of the peace of Clackamas County, at the close of business of each month, shall make a certified report to the county auditor

of all fines and forfeited bails collected by him, and all commitments to the county jail during the month, showing the names of all persons committed and the date and term of sentence.

51.370 to 57.400 [Reserved for expansion]

CONSTABLES

51.410 Elective office of constable abolished, appointive office created. The elective office of constable is abolished, and the appointive office of constable is created.

51.420 to 51.430 [Reserved for expansion]

51.440 Appointment of constables; term; manner of appointment; revocation. The county court or board of county commissioners may appoint a constable of and for any justice of the peace district in the county. He shall hold office for a term of four years unless sooner removed as provided in this section. The appointment shall be in writing filed with the county clerk and shall be revocable only for cause, and then by a writing of the court or board filed with the clerk. Upon the filing of the revocation, the term of office of the constable shall cease and expire.

51.450 Qualifications for office. A person shall not be eligible to the office of constable unless he is a citizen of the United States, and an elector of the county, and for a period of not less than six months next preceding his appointment has been, and then is, a resident of the district.

51.460 When term of office to commence; filing oath and undertaking; amount of undertaking. The term of office of a constable shall commence on the first Monday in January next following the appointment of the constable. Before entering upon the duties of the office, the person appointed thereto shall qualify by filing with the county clerk of the county wherein he has been appointed an oath of office, by him subscribed, to the same effect as that required of a justice of the peace, and also an official undertaking, duly approved as in the case of a justice of the peace, in the penal sum of $2,500; provided, that the official undertaking of a constable of any district in which is located the county seat, or any part thereof, shall be in such greater penal sum, not exceeding $10,000, as the county court or board of county commissioners shall designate.

51.470 Form of undertaking. The official undertaking of a constable shall be in substantially the following form:

Whereas A B has been duly appointed constable of the district of _____, in the County of _____, we, C D and E F, hereby undertake that if A B does not faithfully execute and return all process to him directed and delivered, and pay over according to law all moneys that shall come into his hands by virtue of his office, then we, or either of us, will pay to the State of Oregon the sum of $_____.

C D.
E F.

51.480 Qualifications of sureties. The sureties in the undertaking provided for in ORS 51.460 shall have the qualifications of bail and shall be residents of the county; and their justification must be filed with the undertaking.

51.490 Filling vacancies; qualifying for office. If a vacancy occurs in any such office of constable, the county court or board of county commissioners may appoint some person possessing the qualifications prescribed by ORS 51.450 to fill the vacancy until the expiration of the term. The person so appointed to fill the vacancy shall qualify in the manner and form prescribed by ORS 51.460.

51.500 Deputies; appointment; revocation; oath of office; authority and powers; compensation. With the approval of the county court or board of county commissioners of the county wherein he has been appointed, such constable may have one or more deputies, who shall be appointed by him in writing. Each such appointment shall be filed with the county clerk of the county, and shall be revocable at any time by the constable, by a writing signed by him and filed with the clerk; and, upon the filing, the term of the deputy or deputies therein named shall cease. Every person appointed deputy shall, before entering upon the duties of the office, take and file with the county clerk an oath of office of like effect to that taken and filed by the constable. Each deputy shall have authority and power to perform any duty or act that the appointing constable has the authority and power to perform, and the constable shall be responsible on his official bond for any

act or omission of any deputy. Each deputy shall receive monthly from the county such salary as may be fixed by order of the county court or board of county commissioners. The salary shall be payable in the same manner as the salaries of county officers are paid, and shall be in full compensation for all official duties and services performed and rendered by the deputy; and no other compensation, commissions or fees whatever shall be allowed to, or received or retained by him.

51.510 [Reserved for expansion]

51.520 [Repealed by 1953 c.306 §18]

51.530 Computing mileage of constable. Mileage for any service performed by a constable shall be computed from the place of holding the justice's court in the district where the constable resides, if issued by a justice of such district; and if not, then from the residence of the constable.

51.540 Civil fees collected in advance; payment to county treasurer. The constable shall collect in advance in civil cases for each service performed in the execution of his official duties the fees fixed by law to be charged for the same or a similar service by the sheriff of the county wherein such constable has been appointed. The constable shall, not later than the fifteenth day of the month following the month in which such fees are collected, pay them over to the county treasurer of the county wherein he has been appointed, for crediting to the general fund of the county, and take the receipt of the treasurer for them.

51.550 Office; clerical assistance; books, office equipment and supplies. The constable shall have his office in and with that of the justice of the peace, without charge. The county court or board of county commissioners of the county wherein such constable has been appointed may provide him with such clerical assistance as shall be necessary to enable him promptly and efficiently to perform the duties of his office, and also with such books, records, forms, papers, stationery, postage and office equipment and supplies as may be necessary in the proper transaction of the business of such office.

51.560 to 51.600 [Reserved for expansion]

PROVISIONS RELATING TO CONSTABLES IN CERTAIN DISTRICTS

51.610 Election of constables in cities having 25,000 or more inhabitants; term of office. In every city having 25,000 or more inhabitants, there shall be one constable who shall be elected at the election for such office next preceding the expiration of the term of office of his predecessor and who shall hold office for a term of four years. He shall be elected, in the manner now provided by law, by the qualified electors of the city and of such contiguous territory as has been or hereafter may be set off and established by the county court or board of county commissioners as a part of the justice of the peace and constable district comprising such city and such contiguous territory.

51.620 Special deputies in justice of the peace and constable districts having over 100,000 population. The constable of such a district of 100,000 or more inhabitants, now holding office or hereafter elected under the provisions of ORS 51.610, may appoint a special deputy or deputies for the purpose only, and with authority only, to receive and serve summons and civil process in any particular action or proceeding, the title of the action or proceeding to be stated in the appointment of such special deputy. The special deputies shall serve without pay. A certified copy of the appointment of the special deputy or deputies shall be filed with the county clerk; and the persons so appointed shall, before entering upon the duties of the office, take and file with the county clerk the requisite oath of office. The constable shall also be responsible on his official bond for any and all acts and omissions of the special deputies.

51.630 Traveling expenses and mileage in justice of the peace and constable districts in which district court is located. In any such justice of the peace and constable district, whenever the constable is required to make service of summons, or any other writ or process, within the limits of such district, he shall be entitled to receive and collect from the litigant requesting him to make the service, the actual, necessary traveling expenses incurred by him in making service of the summons or other writ or process, and not exceeding 10 cents per mile for the actual number of miles necessarily traveled, except that the minimum charge for traveling

expense shall be 50 cents for each service. [Amended by 1959 c.621 §1]

51.640 Fees in civil cases collected by constable in districts of over 300,000. Each constable in a district having more than 300,000 inhabitants shall collect in advance in all civil cases from all litigants the fees prescribed in this section, which fees shall be for the benefit of the general fund of the county, and shall, not later than the first day of the month following the collection of such fees, be paid by the constable to the treasurer of the county. Such fees shall be as follows:

(1) For serving a summons, order, writ or process in any civil case, other than in cases in the small claims department, $1 for service on one party and 50 cents additional for each additional party served.

(2) For serving any process issued out of the small claims department upon a cause of action assigned to the plaintiff or claimant in such proceeding, $1.

(3) For serving any process issued out of the small claims department, which cause of action has not been assigned to the plaintiff therein, 50 cents.

51.650 [Repealed by 1953 c.306 §18]

51.660 Justice of the peace and constable districts for certain counties. It shall be the duty of the county court of any county in which there is a district court organized under ORS 46.020, at any regular term, whenever the court shall deem it necessary, to set off and establish or modify the boundaries of the justice of the peace and constable districts within the county.

51.670 Constables of abolished justice districts to continue temporarily in county seats of certain counties having district courts. All constables in the justice districts abolished by ORS 51.030 shall be continued as constables of the district courts created by ORS 46.020 or 46.025 with the same duties, powers and authorities as are now vested in them by law.

51.680 [Repealed by 1953 c.306 §18]

51.690 [Repealed by 1953 c.306 §18]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1961.

Sam R. Haley
Legislative Counsel