TITLE 6

JUSTICES' COURTS AND CIVIL PROCEEDINGS THEREIN

Chapter 51. Justice's Court Organization and Jurisdiction; Justices and Constables
52. Procedure in Ordinary Actions
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Chapter 51

1973 REPLACEMENT PART

Justice's Court Organization and Jurisdiction; Justices and Constables

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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 and outside any other city in which a district court judge regularly holds court. 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.
[Amended by 1965 c.568 §5]

51.030 Justice districts abolished in certain county seats. Except as provided in subsection (4) of ORS 46.026, each justice district in the county seat in each county having a district court organized under ORS 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 such county seats 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.
[Amended by 1963 c.614 §3]

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) Theft, where the punishment may be imprisonment in the county jail or by fine.

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

(3) Any misdemeanor defined and made punishable by ORS 164.045, 164.245 or 164.354.

(4) Any misdemeanor defined and made punishable by ORS 166.025.

(5) Any misdemeanor defined and made punishable by any provision of ORS 164.345 and 783.600.

(6) Any misdemeanor defined and made punishable by ORS 689.860.
[Amended by 1971 c.743 §312]

51.050 Jurisdiction over misdemeanors; defendant's right to transfer after pleading "not guilty." (1) Except as otherwise provided in subsection (2) of this section, 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.

(2) Any defendant charged with a misdemeanor in a justice court after entering a plea of not guilty, shall be immediately notified of his right to have the matter transferred to the district court for the county where the justice court is located, or if there is no district court in the county, then to the circuit court for the county where the justice court is located. The election shall be made within 10 days after the plea of not guilty is entered and the justice shall immediately transfer the case to the appropriate court.
[Amended by 1963 c.513 §3; 1969 c.180 §1; 1971 c.743 §313; 1973 c.625 §1]

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 279.312 to 279.318, 279.338, 279.510 to 279.515, 279.538, subsection (2) of ORS 279.990, subsections (1) and (2) of ORS 652.990, subsections (3), (4) and (7) of ORS 653.990 and subsections (2), (3) and (4) of ORS 659.990.
[Amended by 1957 c.644 §27; 1971 c.743 §314]

51.070 Crimes "triable" in justice's court. A crime is triable in a justice's court when, by the provisions of ORS 131.205 to 131.325, an action may be commenced therefor in the county where such court is held.
[Amended by 1973 c.836 §328]

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 $1,000.

(2) For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed $1,000.

(3) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding $1,000.

(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.

[Amended by 1973 c.625 §2]

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]

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 Certain justices as temporary district judges where justice districts abolished. If he is qualified to be a judge of the district court, a justice of the peace in a justice district abolished by ORS 51.030 shall be the judge of the district court established under ORS 46.025 during the remainder of his elective term, or until his successor is elected and qualified.

[Amended by 1961 c.724 §25; 1965 c.510 §21]

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 qualifications 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 District court judge as justice of peace. A judge of the district court for a county may exercise the powers and duties of justice of the peace of any justice's court in the county:

(1) At the request of the justice of the peace of the justice's court;

(2) In the event of a vacancy in the office of the justice of the peace, until the vacancy is filled as provided by law; or

(3) In the event of the incapacity or disqualification of the justice of the peace, during the period of such incapacity or disqualification.
[1965 c.377 §2]

FEES AND FINES

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, $3.50.

(2) For the first appearance of the defendant, $2.

(3) For taking an affidavit of a private party, 75 cents.

(4) For taking depositions, for each folio, 50 cents.

(5) For supplying to private parties copies of records and files, the same fees as provided or established for the county clerk under ORS 205.320.

(6) For each official certificate, 75 cents.

(7) For taking and certifying for a private party an acknowledgment of proof of any instrument, $2.15.

(8) For performing a marriage ceremony, and making a return thereof, $5.

(9) Costs in criminal cases, where there has been a conviction, or upon forfeiture of bail, $5.

Not later than the 15th 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.
[Amended by 1965 c.619 §25]

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.

CONSTABLES

51.410 [Repealed by 1965 c.624 §12]

51.440 Appointment of constables; term; removal. (1) The county court or board of county commissioners may appoint a constable for:

(a) Any justice of the peace district in the county.

(b) The district court for the county.

(2) An appointed constable shall hold office for a term of not more than four years to be set by the county court or board of county commissioners.

(3) An appointed constable may be removed for cause by order of the county court or board of county commissioners.

(4) An order of appointment or removal under this section shall not take effect until filed with the county clerk.

[Amended by 1965 c.624 §1; 1971 c.136 §1]

51.450 Qualifications for office. A person shall not be eligible to the office of constable of a justice of the peace district or of a district court unless he is a qualified voter within the county in which the court is located. The county court or county commissioner may designate the district court constable as the constable for one or more justice of the peace districts within the county.

[Amended by 1965 c.624 §3]

51.460 Oath and undertaking; amount of undertaking. Before entering upon the duties of the office of constable, the person selected shall qualify by filing with the county clerk an oath of office subscribed and to the same effect as 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 the district court or of any justice of the peace 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.

[Amended by 1965 c.624 §4]

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

Whereas A B has been duly selected constable of the district of _____, in the County of _____, (or, of the District Court of the State of Oregon, for 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.

[Amended by 1965 c.624 §5]

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 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.
[Amended by 1965 c.624 §6]

51.500 Deputies; appointment; revocation; oath of office; authority and powers; compensation. With the approval of the county court or board of county commissioners, a 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.
[Amended by 1965 c.624 §7]

51.520 [Repealed by 1953 c.306 §18]

51.530 [Amended by 1965 c.624 §8; repealed by 1973 c.393 §4]

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 selected. The constable shall, not later than the 15th 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 selected, for crediting to the general fund of the county, and take the receipt of the treasurer for them.
[Amended by 1965 c.624 §9]

51.550 Office; clerical assistance; books, office equipment and supplies. (1) The constable of a justice of the peace district shall have his office in and with that of the justice of the peace, without charge.

(2) The county court or board of county commissioners of the county wherein a constable has been selected shall provide him with such office space and 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.
[Amended by 1965 c.624 §10]

51.610 [Amended by 1965 c.134 §1; 1965 c.624 §11; repealed by 1971 c.136 §3]

51.620 [Repealed by 1971 c.136 §3]

51.630 [Amended by 1959 c.621 §1; repealed by 1971 c.136 §3]

51.640 [Amended by 1965 c.613 §26; repealed by 1971 c.136 §3]

51.650 [Repealed by 1953 c.306 §18]

51.660 [Repealed by 1965 c.510 §24]

51.670 [Amended by 1965 c.510 §22; repealed by 1965 c.624 §12]

51.680 [Repealed by 1953 c.306 §18]

51.690 [Repealed by 1953 c.306 §18]

51.700 [1965 c.624 §2; repealed by 1971 c.136 §3]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 November 1, 1973.

Thomas G. Clifford
Legislative Counsel