

No. 362, A.]

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CHAPTER 218

AN ACT to amend sections 1, 2, 3, 4, 5, 6, 8, 9, 11, 12, 12a, 13, 13m, 18 (as amended by chapters 113, 536 and 540, laws of 1953), 19, 23, 24 and 26; to repeal and recreate sections 7 and 10; and to create sections 1m and 3m, all of chapter 156, laws of 1951, relating to a second judge for the municipal court of Kenosha county and related matters.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Section 1 of chapter 156, laws of 1951, is amended to read:

(Chapter 156, laws of 1951) Section 1. There is hereby created and established in the county of Kenosha, state of Wisconsin, a court to be known and designated as the "Municipal court of Kenosha county," having the powers and jurisdiction hereinafter specified and provided, and * * * *having 2 judges, one of whom shall be the senior judge as hereinafter designated, each of whom shall exercise all of the powers vested in the municipal judge.*

SECTION 2. Section 1m of chapter 156, laws of 1951, is created to read:

(Chapter 156, laws of 1951) Section 1m. The judge who is senior in time of service shall be designated the senior judge of the municipal court and shall, after consultation with the associate judge, allocate the work of the court. In addition, the senior judge shall perform the various duties assigned to the senior judge by this chapter. In the event of the absence or inability of the senior judge to so act, the associate judge shall act with like powers and duties.

SECTION 3. Sections 2 and 3 of chapter 156, laws of 1951, are amended to read:

(Chapter 156, laws of 1951) Section 2. The municipal court of Kenosha county shall be a court of record and have a clerk, and a seal with a suitable device to be procured under the direction of the *senior* judge thereof.

Section 3. The municipal court of Kenosha county shall have and exercise powers and jurisdiction concurrent with and equal to the circuit court of Kenosha county in bastardy cases and in all cases of crimes and misdemeanors arising in said county, except *murder, manslaughter and homicide.*

SECTION 4. Section 3m. of chapter 156, laws of 1951, is created to read:

(Chapter 156, laws of 1951) Section 3m. There is hereby conferred upon the municipal court of Kenosha county, and each judge thereof, all the jurisdiction, powers, functions and duties of a small claims court as prescribed in chapter 254, of the statutes. The rules of practice and procedure, including costs and fees, as prescribed in said chapter 254,

shall apply to the municipal court and each judge thereof in and about exercising the jurisdiction, powers, functions and duties so conferred. All pleadings, orders and judgments within the jurisdiction so conferred shall carry the designation "Municipal Court, Small Claims Branch".

SECTION 5. Sections 4, 5, and 6 of chapter 156, laws of 1951, are amended to read:

(Chapter 156, laws of 1951) Section 4. Said municipal court shall have and exercise powers and jurisdiction in all civil actions and special proceedings in law and equity of which the circuit court of Kenosha county would have jurisdiction, concurrent with, and equal to the jurisdiction of the circuit court for Kenosha county, where the value of the property in controversy, or the amount of money claimed or sought to be recovered, after deducting all payments and set-offs, shall not exceed \$100,000, and also of all actions or proceedings in which the amount claimed does not exceed the sum aforesaid, although the value of the property to be affected exceeds that sum. Said municipal court in all circuit court actions and special proceedings may issue all writs, orders, and process throughout the state. Service of summons may be had throughout the state and when the summons cannot with due diligence be served within the state, service of the summons may be made without the state or by publication upon the defendant in accordance with the provisions of law providing for such service in circuit court. Said municipal court, within its jurisdiction as provided in *this* chapter * * * shall have all the powers of the circuit court and follow the rules of pleading and procedure applicable in the circuit court in the trial of all circuit court actions and proceedings, whether on appeal, information, or originally commenced by process of the form used in circuit court.

In any action commenced in said municipal court, if the defendant is not a resident of Kenosha county and resides in some other county of Wisconsin, he may apply for and have a change of the place of trial to the proper county upon the grounds and pursuant to the provisions governing change of venue in actions in circuit court by serving upon the plaintiff a demand in writing substantially as prescribed in section 261.03 of the statutes within 20 days after service of the complaint. The right to obtain a change of the place of trial under this act shall be in addition to the provisions of section 261.07 of the statutes.

All judgments and all proceedings wherein service of process has been had outside of Kenosha county or by publication from which said judgments and proceedings no appeals are pending and the same have not been otherwise challenged, are hereby validated.

Section 5. The judgments and orders of said municipal court in civil and criminal actions, except such as would otherwise be cognizable by justices of the peace *and except as to those judgments and orders of the small claims branch of this court*, may be reviewed by the supreme court in the same manner that judgments and orders of circuit courts may be.

All judgments in civil actions, except such as would otherwise be cognizable by justices of the peace, rendered in said municipal court and docketed, as prescribed by law, in the office of the clerk of said court, shall for a period expiring 10 years from the date of the rendition thereof, be a lien upon the real property in said county of Kenosha except the homestead mentioned in section * * * 272.20 of the statutes * * *, of every person against whom such judgment shall be rendered and docketed, and which he may have at the time of docketing thereof in said county of Kenosha or which he shall acquire at any time thereafter within said period of 10 years. Such judgments shall have the same force and effect and be subject to the same limitations as judgments of the circuit court

and said judgments shall be enforced and executions thereon be issued from said municipal court in the same manner and with the same force and effect as judgments and executions of and from the circuit court of Kenosha county.

Section 6. The municipal * * * *judges*, in addition to the powers vested in said municipal court, as aforesaid, shall have all the powers and jurisdiction of a justice of the peace in said county in all civil and criminal actions and proceedings, and the power to hear and determine any such cases although the title to land may come into question therein, and shall have power to hold preliminary examinations in criminal cases; and shall have exclusive jurisdiction of all prosecutions for breach of the charter and of any ordinance of the city of Kenosha, and in the trial of criminal actions for offenses committed within said city and county which would otherwise be cognizable by justices of the peace, subject to an appeal to the circuit court for Kenosha county from any judgments or orders made in such actions. Said * * * *judges* and the several circuit court commissioners shall have jurisdiction to institute and conduct examinations in all criminal and bastardy cases arising within the county of Kenosha, and the power and jurisdiction to cause to come before him or them the persons so charged with committing bastardy or any criminal offense, within such county and commit them to jail or bind them over for trial at the next term of the county court or to the circuit court as the case may require, and on a plea of guilty by the accused and a request by him to be sentenced, the said * * * *judges*, shall have power, authority and jurisdiction to sentence the accused for any offense except *murder, manslaughter and homicide*.

SECTION 6. Section 7 of chapter 156, laws of 1951, is repealed and recreated to read:

(Chapter 156, laws of 1951) Section 7. All examinations, recognizances and commitments from or by either municipal judge or other examining magistrates of the county of Kenosha in bastardy cases, and in all criminal cases, except murder, manslaughter and homicide, shall be certified and returned to the municipal court and in all murder, manslaughter and homicide cases shall be certified and returned to the circuit court for the county of Kenosha, within the time prescribed by law, and the attendance of witnesses required upon the trial of any person so committed shall be secured in the same manner as provided by law in the circuit court, and all such cases shall thereafter be proceeded with and tried as provided by law in similar cases in circuit courts. When certified and returned to the municipal court the trial shall not be had before the judge who heard the preliminary examination.

SECTION 7. Sections 8 and 9 of chapter 156, laws of 1951, are amended to read:

(Chapter 156, laws of 1951) Section 8. Appeals from judgments of justices of the peace in said county may be taken either to such municipal court * * * or to the circuit court of Kenosha county, and when so taken to said municipal court * * * shall be heard and disposed of in accordance with the rules and practice of the circuit court of Kenosha county.

Section 9. The general provisions of law which may at any time be in force relative to circuit and justices' courts, and actions and proceedings therein, in civil and criminal cases, shall apply also to said municipal court and county court unless inapplicable and except as otherwise provided in this act; and the rules of practice prescribed or which may hereafter be prescribed by the justices of the supreme court for circuit courts, shall be in force in said municipal court and county court; said courts may make rules of practice which shall conform as nearly as applicable to the rules of practice of circuit courts, but the laws of the state relative to change

of venue in criminal actions which have heretofore been within the jurisdiction of justices of the peace shall not apply to said municipal court or to the * * * judges thereof. Court commissioners in said county shall have the same powers and be subject to the same duties in respect to actions and proceedings in said municipal court and county court as in the circuit court.

SECTION 8. Section 10 of chapter 156, laws of 1951, is repealed and recreated to read:

(Chapter 156, laws of 1951) Section 10. (a) The provisions of law applicable to change of venue in circuit courts of this state, except section 261.08 of the statutes and except as herein otherwise provided, shall be applicable to the municipal court. In any action or proceeding in which the municipal court exercises jurisdiction concurrent with the circuit court, if an affidavit of prejudice is filed within the time prescribed therefore against one of the municipal judges the case shall be heard by the other municipal judge or the latter shall request the county judge to hear the case, and in any such action or proceeding in the municipal court if affidavits of prejudice are filed within the time prescribed against both municipal judges and the county judge, then the venue in the action shall be changed to the circuit court of Kenosha county. The filing of an affidavit or affidavits of prejudice shall not prevent the granting of a change of venue as provided in section 261.04 of the statutes or be construed as abrogating the right to the change of venue provided in section 261.03 of the statutes and when such change of venue shall be made it shall be made by the municipal court direct to the proper county for the trial of the action. No party shall be entitled to name in an affidavit of prejudice more than one municipal or county judge and no party shall be entitled to file more than one affidavit of prejudice in the same action.

(b) With respect to any action or proceeding in which the municipal court exercises jurisdiction concurrent with the circuit court an affidavit of prejudice must be filed and motion made thereon:

1. If against either municipal judge, on or before the first day of the term as to all cases on the calendar at the commencement of the term.

2. If against either municipal judge, within 10 days after the date of the order advancing for trial any case triable by court and jury which does not appear on the calendar at the commencement of the term and which is advanced for trial during the term.

3. If against either municipal judge as to cases triable before the court without a jury and noticed for trial too late to be placed on the calendar within 10 days after the case is noticed for trial.

4. If against the county judge, not less than 48 hours before the time set for trial, if no affidavit of prejudice is filed against either municipal judge or if an affidavit of prejudice is filed against one of them and in either such situation the county judge is requested to hear the case.

5. If affidavits of prejudice are filed against both municipal judges then the county judge shall immediately thereafter be requested to hear the case and then if against the county judge, within 10 days after the date of the filing of the last of the 2 affidavits of prejudice against the municipal judges.

(c) The filing of such affidavit of prejudice shall not deprive the judge against whom the affidavit is filed of jurisdiction to determine pending motions made by the party filing such affidavit.

(d) If any person charged upon indictment or information with a criminal offense shall have procured a change of venue to the circuit court of Kenosha county, the municipal court shall commit or hold the party to bail to appear at the current term of the circuit court, and the clerk of said municipal court shall transmit all papers and a copy of the records

and proceedings in said case properly certified to be such under the seal of the court, to the circuit court, which shall then have full jurisdiction of the action. All recognizances previously made in such cases and returned to the municipal court may be enforced by the circuit court as fully as if they had been originally certified and returned thereto.

SECTION 9. Sections 11, 12 and 12a of chapter 156, laws of 1951, are amended to read:

(Chapter 156, laws of 1951) Section 11. The qualified electors of the county of Kenosha shall, on the first Tuesday of April, 1909, and on the same day of the same month each 4 years thereafter, elect a suitable person to the office of judge of said municipal court, to be called municipal judge, who shall hold his office for the term of 4 years from the first Monday of January next succeeding his election, and until his successor is elected and qualifies, and who may be removed from office in the manner provided by the constitution of this state for the removal of the judges of the supreme and circuit courts; provided, * * * that for the first election under this act, it shall not be necessary to give more than 8 days notice thereof. The municipal judge who shall have been elected in the year 1909 as aforesaid, shall, in addition to the term for which he is elected as aforesaid, hold his office from the first Monday of May, 1909, to the first Monday of January, 1910. *The qualified electors of Kenosha county shall on the first Tuesday in April, 1956, elect the second municipal judge, and he shall serve a term from the first Monday in July, 1956 to December 31, 1959, and on the first Tuesday in April, 1959, and every 4 years thereafter, said electors shall elect the second municipal judge to hold office from the first Monday of January next succeeding his election and until his successor is elected and qualifies.* Whenever a vacancy shall happen in the office of *either* municipal judge, the governor * * * shall appoint a suitable person, duly qualified, to fill such vacancy until a successor is elected and qualifies. Elections to fill vacancies for the residue of the term shall be held and notice thereof shall be given in the same manner as for the election of county judges. * * * *Each* judge shall be an attorney at law, admitted to practice in the courts of this state; shall receive no fees of office or compensation other than his salary. * * * *Each* shall have the qualifications, be subject to all the liabilities, prohibitions and restrictions of circuit judges, and may exercise the powers of circuit judges except as herein provided. * * * *Each* judge before entering upon the duties of his office shall take and subscribe the oath of office prescribed in the constitution, and file the same in the office of the county clerk of the county of Kenosha. The * * * *salaries of both judges shall be equal and shall be \$2,000 per annum until otherwise fixed by the county board, which shall be paid * * * each monthly by the county treasurer of said county, and while * * * each holds the office of municipal judge he shall not practice his profession.*

Section 12. In case of sickness, absence, or inability arising from any cause, of the county judge of Kenosha county, or when said judge for any cause deems it improper for him to hear and try any proceeding in the county court, he may request of the municipal * * * *court* of said county a *judge* to hold court or hear and try any matter or proceeding as a court or as a judge of said court in the Kenosha county court and said municipal judge is hereby authorized and empowered, upon said request from the county judge, to hold said court and perform any act as the judge thereof as fully as said county judge is authorized and empowered to do. In case of the inability of said county judge to make such request, or in case of a vacancy in said office, said municipal judge shall so act and fulfill the duties of said county judge, at the request of the circuit judge of said county, until such inability shall cease, or until the vacancy shall be filled. The said municipal judge, when so acting

under the request of the county judge, or of the circuit judge, shall be designated in such proceedings as "acting county judge."

Section 12a. In case of sickness, absence, or inability arising from any cause, of the municipal * * * *judges* of Kenosha county, or when * * * *the senior judge* for any cause, deems it improper for * * * *either or both of the judges* to hear or try any proceeding of the municipal court of said county or before * * * *them* as * * * *judges* of said court, he may request the county judge of said county to hold court and hear or try any matter or proceeding as a court or judge of said municipal court in Kenosha county; and the said county judge is hereby authorized and empowered upon such request from the *senior* municipal judge to hold said municipal court and perform any act thereof as fully as said municipal judge is authorized or empowered to do. In case of the inability of *both of* said municipal * * * *judges* to make such request or in case of a vacancy in said office, said county judge shall so act and fulfill the duties of said municipal judge at the request of the circuit judge of said county until said inability shall cease or until said vacancy shall be filled. Such county judge acting under the request of the *senior* municipal judge or of the circuit judge shall be designated in said proceedings as "acting municipal judge."

SECTION 10. Sections 13 and 13m of chapter 156, laws of 1951, are amended to read:

(Chapter 156, laws of 1951) Section 13. The *senior* judge of said municipal court shall appoint a suitable person to the office of clerk of said municipal court who shall hold his office during the pleasure of said judge and until his successor is appointed.

Said clerk shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed in the constitution, and file the same in the office of the county clerk of Kenosha county, and shall also execute and deliver to said county clerk a bond with sufficient sureties, to be approved by the chairman of the county board of said county and the mayor of the city of Kenosha, conditioned that he will account to and pay over to the city treasurer of said city, and to the county treasurer of said county, all fines and penalties and other moneys belonging to the treasury of the city or county of Kenosha, and will pay over all moneys which shall come into his hands by virtue of his office as clerk, to the persons entitled to the same, and perform all of the duties of his office as required by law. Said clerk shall keep justice dockets for civil and criminal actions heretofore cognizable by justices of the peace, and shall also keep a record book, a criminal record, a judgment book, a lien docket and a minute book, in the manner and form now in use in the circuit courts of this state and containing the entries as provided by law in section 59.39 of the statutes * * * . He shall have the care and custody of all books, papers and records of the courts; he shall be present at all trials, and may administer all necessary oaths. He shall keep the minutes of all proceedings, issue the commitments and executions and enforce the same, and make up and keep the record of the court in all cases therein, under the direction of the judge. He shall issue all processes excepting summons in civil actions, under his hand and the seal of the court and test them in the name of the judge, signing them by his title of office, and tax the costs, including \$1 for state tax, in the cases required by law; provided always that the summons in civil actions may be issued and served in the same manner as in actions commenced in the circuit court. He may take bail from persons arrested, when court is not in session, subject to the revision of the court, and shall under the direction of the judge perform all other acts necessary to carry out the jurisdiction herein given to said court. He shall procure all necessary supplies for the use of said court, and perform all ministerial acts required of him by and under the direction

of said court. He shall render an account to the county treasurer quarterly, which shall be so itemized as to show the fines, penalties and officers' fees in each case, and in criminal cases a brief statement of the character of the prosecution and the judgment of the court. He shall receive a salary of \$900 per annum, until otherwise fixed by the county board, payable monthly out of the county treasury. Such salary shall be in full compensation for services. He may appoint a deputy, subject to the approval of the judge. The clerk shall be liable for the official acts of his deputy and for his compensation.

Section 13m. The *senior* judge of said municipal court shall appoint a phonographic reporter or reporters of said municipal court who shall be skillful in the art of shorthand reporting. He shall hold his office during the pleasure of said judge and until his successor is appointed. Said phonographic reporter shall receive such annual salary as the county board shall fix, payable in equal monthly instalments out of the county treasury. Such salary shall be in full compensation for his services and for making such transcripts from shorthand notes as shall be required by the judge. Said reporter shall furnish to all parties to actions or their attorney requiring them certified transcripts at a price not to exceed 10 cents per folio, and 2½ cents per folio for copies.

SECTION 11. Section 18 of chapter 156, laws of 1951, as amended by chapters 113, 536 and 540, laws of 1953, is amended to read:

(Chapter 156, laws of 1951) Section 18. The jury commissioners appointed as provided by section 255.03 of the statutes shall at the meetings for drawing the jury for the January and September terms of each year for the circuit court of Kenosha county furnish to the clerk of said municipal court a list containing such number of names as the municipal judge shall direct of persons of like qualifications as prescribed for jurors of the circuit court in the same manner that the names are furnished for the drawing of the jurors for the said circuit court. The list so prepared shall be known as "the county at large list." The jury commissioners shall also furnish to the clerk of said municipal court a list containing such numbers of names as the *senior* municipal court judge shall direct of persons of like qualifications residing within the city of Kenosha. Such list so furnished shall be known as "Kenosha jury list." Whenever either of the several lists shall from any cause be entirely lacking or shall have become depleted by reason of removals, exemptions or otherwise, the court may in its discretion require the commissioners to meet and certify new lists or to certify additional names of persons eligible for jury service and the clerk shall forthwith prepare such new lists or enter such additional names on the proper list.

SECTION 12. Section 19 of chapter 156, laws of 1951, is amended to read:

(Chapter 156, laws of 1951) Section 19. In all justice court actions tried before * * * a municipal judge in which a jury trial may be had, the jury shall consist of 6 persons and shall be drawn in the following manner: The clerk if in attendance and if not, the judge shall draw by lot 18 names from the box containing the names on the "Kenosha jury list." The jury shall be struck from this list in the same manner as is now provided for in justice court trials, except that instead of summoning talesmen the panel shall be completed by drawing from the same box from which the original list was obtained unless the municipal judge orders the completion of the jury by summoning talesmen. Nothing herein contained shall be construed as denying to the court or judge thereof the power of ordering that any trial jury may be completed by the summoning of talesmen. Examinations of jurors on their voir dire shall be allowed.

SECTION 13. Sections 23 and 24 of chapter 156, laws of 1951, are amended to read:

(Chapter 156, laws of 1951) Section 23. The fees of the clerk, witnesses, jurors and officers in all cases within the jurisdiction of justices of the peace, shall, except when otherwise herein provided, be the same as they have heretofore been allowed in courts of justices of the peace, and in all actions beyond the jurisdiction of justices of the peace *and the small claims branch*, the fees of the clerk, witnesses, jurors and officers shall be the same as are allowed by law to the clerk, witnesses, jurors and officers in the circuit court of Kenosha county; provided, always, that the fees of said clerk shall in no event exceed the sum of \$5 in all civil actions within the jurisdiction of justices of the peace; and provided, further, that the fees of said clerk in all civil actions beyond the jurisdiction of the justices of the peace shall not exceed the sum of \$6, exclusive of state tax.

Section 24. The costs and fees of the prevailing party in all civil actions shall be taxed and allowed as follows: In actions cognizable by justices of the peace, the costs and fees shall be taxed and allowed in the same amount as would be allowed in case said action had been commenced in the court of a justice of the peace. In all other actions of which said municipal court has jurisdiction, *except in the small claims branch*, all costs, fees and disbursements shall be taxed and allowed in the same manner and to the like amount as they are taxed and allowed in the circuit court, except as hereinbefore provided.

SECTION 14. Section 26 of chapter 156, laws of 1951, is amended to read:

(Chapter 156, laws of 1951) Section 26. The salary of the * * * *judges* and clerk, and all other expenses necessarily incurred in the maintenance of said court, are hereby adjusted and divided as follows: Two-thirds of said salaries and expenses of maintenance shall be paid by the county of Kenosha, including the city of Kenosha and the remaining one-third shall be paid by the city of Kenosha. Said salaries and expenses shall, in the first instance be paid out of the county treasury of Kenosha county as hereinbefore provided. At the annual accounting between the city and county of Kenosha, the county treasurer shall furnish unto the proper officer of the city of Kenosha, a detailed statement of the amounts paid out of the county treasury as aforesaid. And it shall be the duty of the said treasurer of the city of Kenosha when said account shall have been rendered and allowed, and he is hereby authorized and empowered, to pay unto the said county treasurer a sum equal to one-third of said expenses.

Approved June 9, 1955.
