

No. 183, A.]

[Published May 22, 1959.

CHAPTER 44

AN ACT to amend chapter 384, laws of 1951, sections 2499, 2502, 2506, 2509 and 2512; and to create chapter 384, laws of 1951, section 2502m, relating to branches of and an additional judge and change of venue in the municipal court for the city and county of Milwaukee.

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

SECTION 1. Chapter 384, laws of 1951, section 2499, is amended to read:

(Chapter 384, Laws of 1951) Section 2499. The municipal court of the city and county of Milwaukee as heretofore established is continued. It shall be a court of record and have a clerk and a seal with suitable device to be procured under the direction of the judge thereof at the expense of the city of Milwaukee. It has and may exercise powers and jurisdiction concurrent and equal with the circuit court of Milwaukee county in all cases of crimes and misdemeanors arising in said county, and exclusive appellate jurisdiction of all crimes and misdemeanors tried before the police court of the city of Milwaukee, and before justices of peace in said county in the same manner as is provided by law for appeals

to the circuit court in such cases. All examinations, recognizances and commitments for trial in cases of crime and misdemeanors arising in towns of said county and not triable before justices of the peace, shall be certified, returned or made to the municipal court of said county instead of to the circuit court of said county, and all such cases shall thereafter be proceeded in and tried in said municipal court as provided by law in similar cases in the circuit court. Said municipal court * * * also has jurisdiction of all actions brought for breach of any recognizance returned to or given in said court; but no judgment in any such action shall constitute a lien upon real estate in said county until a transcript thereof is duly docketed in the office of the clerk of the circuit court of said county, in like manner as judgments of circuit courts in civil cases are required to be docketed, and when so docketed, it shall have the same lien upon real estate in said county as judgments of the circuit court so docketed have. The judgments of the municipal court in all cases tried before it may be examined and reviewed by the supreme court in the same manner as the judgments of the circuit court * * *. No grand jury shall hereafter be drawn or summoned for the circuit court of Milwaukee county, and grand jurors shall not be summoned to attend any term of said municipal court unless the *senior* judge thereof, or in his disability the judge of the other branch, shall make and file with the clerk an order in writing directing a grand jury to be summoned, and specifying the time at which such grand jury shall appear before the court. Grand juries, when ordered, shall be drawn and summoned as provided in chapter 116 [255], of the annotated statutes. To carry out its jurisdiction, such municipal court shall have all the powers of circuit courts, and the municipal judge shall have the same powers in all matters appertaining to the jurisdiction of said municipal court as circuit judges.

SECTION 2. Chapter 384, laws of 1951, section 2502, is amended to read:

(Chapter 384, laws of 1951) Section 2502. The qualified electors of the city and county of Milwaukee shall, on the first Tuesday of April * * * 1895, and on the same day of the same month each 6 years thereafter, elect a suitable person to the office of judge of said municipal court to be called the "municipal judge," who shall hold * * * office for the term of 6 years from the first Monday of January next succeeding such election, and until his successor is elected and qualified, who may be removed from office in the manner provided in the constitution for the removal of supreme and circuit judges. Said electors, on the first Tuesday of April * * * 1895, and the same day in the same month each 6 years thereafter, shall elect a suitable person to the office of clerk of the municipal court, who shall hold * * * office for the term of 6 years from the first Monday of January next succeeding his election, and until his successor is elected and qualified. If a vacancy shall happen in the office of judge of said court, the governor shall * * * fill the vacancy until a successor is elected. Elections to fill such vacancies shall be held as provided in section 88 [8.02], and notice thereof shall be given by the sheriff of Milwaukee county in the same manner as for the election of county officers. If a vacancy shall happen in the office of clerk, the *senior* judge or in his disability the judge of the other branch of said court shall * * * fill the same. All vacancies so filled shall be for the residue of the term only. All such elections shall be held and conducted and the votes cast shall be returned and canvassed, and the certificates of election shall be given in all respects as is provided by law in the case of the election of county judges.

SECTION 3. Chapter 384, laws of 1951, section 2502m, is created to read:

(Chapter 384, laws of 1951) Section 2502m. (1) There is created and established an additional branch, to be known as branch 2, in the municipal court for the city and county of Milwaukee, the present court to be known as branch 1. Unless the context requires otherwise, as used in this act "judge" and "court" include both of the judges and the courts of the court branch 1 and the court branch 2. The judge of branch 1 and the judge of branch 2 shall have the same qualifications as a circuit court judge and shall each be paid a salary which shall be the same as the highest aggregate salary paid a circuit court judge in Milwaukee county.

(2) The qualified electors of the city and county of Milwaukee shall, on the first Tuesday in April 1960, elect a judge of branch 2 to take office on the first Monday in May 1960 for a term to expire on the first Monday in January 1966. Thereafter the terms of office shall be 6 years. The elections shall be held, conducted, returned, canvassed and certificates of election given as in the election of county judges.

(3) The judge who is senior in time of service shall be the senior judge of the court and shall allocate the work of the court. Each judge shall appoint his own reporters and other personnel.

SECTION 4. Chapter 384, laws of 1951, sections 2506, 2509, and 2512, are amended to read:

(Chapter 384, laws of 1951) Section 2506. The clerk of said court shall have the care and custody of all books, papers and records of the courts; he, or one of his deputies shall be present at all trials and proceedings held in said court; he, or one of his deputies may administer all necessary oaths, and may take and certify the acknowledgments of all deeds, and other instruments required or authorized to be acknowledged; he, or one of his deputies shall keep minutes of all proceedings, enter judgments, issue the commitments and executions to enforce the same, and make up and keep the records of the court in all cases therein under the direction of the judge; he, or one of his deputies shall issue all processes under his hand and the seal of the court, and attest in the name of the judge, signing it by his title of office, and shall tax costs. Such clerk shall, also under the direction of the common council of said city, procure and furnish all necessary blanks, stationery, book and paper cases, desks, record books, office furniture, lights and fuel, for the use of said court and its clerks, at the expense of said city. He may be removed from office by the *senior* municipal judge, or *in his disability by the judge of the other branch*, for incompetency, failure to pay over moneys as required by law, or other official misconduct, or wilful or habitual neglect to perform the duties of his office. On such removal such *senior* judge, or *in his disability the judge of the other branch*, may appoint some suitable person to fill the vacancy until it is filled by election, unless it occurs within 20 days before or after the first Tuesday in April, and then for the residue of the term, and the person so appointed shall have all the powers, and be subject to all the duties and liabilities of such clerk. Such clerk shall account for, and pay over to the treasurer of said city, on the first Mondays of January, April, July, and October all fines, penalties, collections and other fees except witnesses' fees collected and other moneys belonging to the treasury of the city and county of Milwaukee, which may have come into his hands as such clerk up to the day of such payment, and shall also account for and pay over to said city treasurer on the first Mondays of January and July in each year all witnesses' fees in cases involving violation of ordinances of the city of Milwaukee which may have come to his hands as such clerk, up to the day of payment, and which have not been paid to the persons entitled thereto, which witnesses' fees may be paid by said treasurer to such persons, upon the certificate of said clerk, specifying the name of the person entitled thereto, the amount due him, and the

title of the cause in which he was a witness. Said clerk shall likewise and at the same time account for and pay over to the treasurer of the county of Milwaukee all witness, justice and constable fees collected in cases involving violations of state law or county of Milwaukee ordinances which may have come into his hands as such clerk up to the day of payment and which have not been paid to the persons entitled thereto, which witness, justice and constable fees may thereafter be paid by said treasurer to such persons upon the certificate of such clerk specifying the name of the person entitled thereto, the amount due him, and the title of the case in which he was a witness, justice or constable. Said clerk shall not be required to make out any such certificate in either of the foregoing cases after 6 years from the date on which the court decided the case in which such witness fees accrued. The foregoing provisions shall not apply, however, to witness fees of members of the police department of the city of Milwaukee, who may testify for the prosecution. Such witness fees shall be taxed, and when collected shall be paid by the clerk to the treasurer of said city on the first Mondays of January, April, July and October of each year. The clerk of said court is hereby authorized to destroy all files and dockets of cases and proceedings in said court prior to January 1, 1890, and all such files prior to January 1, 1900. It * * * is the duty of said clerk to * * * retain and safely keep the files of all cases for a period of 30 years, and dockets for a period of 40 years, after which same shall be destroyed unless otherwise ordered by the court.

(Chapter 384, laws of 1951) Section 2509. Whenever a change of the place of trial of any action pending in said court * * * is applied for on account of the prejudice of * * * a judge thereof, or whenever * * * a judge of said court * * * is interested in any civil cause or action depending upon the same state of facts that any criminal action is based upon, or * * * is related to the defendant, or complaining witness, or * * * has been of counsel for either of them, or * * * is otherwise disqualified to try the cause, said * * * judge may, in * * * his discretion, either *immediately transfer the action to the other branch of the court or change the place of trial * * * of such action to the circuit court of Milwaukee county, unless it shall be made to appear that the circuit court judge is also prejudiced or disqualified for any reason to try such cause, in which case it shall be changed to some county where such prejudice or disqualification does not exist, or in lieu of changing the place of trial may make an order retaining such action in said municipal court for 30 days from the date of such order, and, in the meantime, shall call upon the circuit judge of any circuit in this state to attend and hold court for the purposes of trying such action. And if such other judge can so attend and hold court for such purpose, the same shall be done with the same effect as if a change of venue to the circuit court of Milwaukee county, or any other county, and a trial therein had occurred in said action. But if no circuit judge shall so attend and assume jurisdiction of such action within said 30 days, then an order for a change of the place of trial shall be entered in such action on the last day of said 30 days, and thereupon such change shall be made to the circuit court of Milwaukee county, or some other county as hereinabove provided. The expense of the judge requested and holding the court as aforesaid shall be paid by the county of Milwaukee. Whenever such change of the place of trial * * * is applied for by one or more, but not all of the several defendants in any indictment or information, or any case where a separate trial has not been previously awarded to the defendant or defendants making such application, the court in every case where it is adjudged that the place of trial be changed to the circuit court of Milwaukee county, or of any other county, shall order the change of the place of trial as to all the defendants named in such indictment or information, in the same manner, and with like effect*

as if all had joined in such application, and whenever in any case the place of trial is changed to the circuit court of Milwaukee county, or of any other county from *either branch of the municipal court*, at any time when a term of such circuit court is being held, the recognizance of the accused and the witnesses, required by law, shall be for their appearance at such term; otherwise, for their appearance at the next term of such circuit court. When another judge is called as herein provided, and shall attend and hold court for the purpose of trying any action in * * * *a branch of the municipal court*, the judge of * * * *that branch* may also hold court at the same time and exercise all the powers of presiding judge, and may try cases by jury.

(Chapter 384, laws of 1951) Section 2512. All fines and penalties collected in criminal cases, and paid into the treasury of said city, shall be accounted for and paid over to the treasurer of said county annually at the time of paying over state and county taxes. The county of Milwaukee shall also at the same time pay to the city of Milwaukee, one-half of the salaries of the judge, clerk and deputy clerk of said court, and one-half of the expenses of blanks, stationery, book and paper cases, desks, record books, office furniture, lights and fuel, used for said court and its clerks, and other expenses of said court, which have been paid for by said city. The clerk of said court shall deposit all moneys received in his official capacity in a depository bank of the city of Milwaukee, which shall be required to give the same security as is required for the deposit of city funds, said depository to be designated and the security approved by order of *the senior judge of the court, or in his disability by order of the judge of the other branch*. The clerk shall account for interest received by him on all moneys required to be paid over to the city treasurer and said treasurer shall apply said interest as well as that thereafter earned, prior to the accounting with the city and county, to the above mentioned salaries and expenses of said court and clerk's office, the net balance being shared equally by said city and county.

Approved May 19, 1959.
