

5571

2011-2012 Regular Sessions

I N S E N A T E

June 2, 2011

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and
when printed to be committed to the Committee on Local Government

AN ACT to amend chapter 851 of the laws of 1949, relating to establishing a police justice court in the village of Port Chester, in relation to hours for opening police justice court in the village of Port Chester

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Chapter 851 of the laws of 1949, relating to establishing a
2 police justice court in the village of Port Chester, sections 4 and 10
3 as amended by chapter 447 of the laws of 1962 and section 6 as amended
4 by chapter 410 of the laws of 1965, is amended to read as follows:
5 Section 1. Police justice court established. There shall be within the
6 village of Port Chester a court known and designated as the police
7 justice court of Port Chester, presided over by a police justice,
8 appointed as hereinafter provided, with powers and jurisdiction as here-
9 inafter set forth.
10 S 2. Creating police justice. The board of trustees of the village of
11 Port Chester, shall, on or before May fifteenth, nineteen hundred
12 forty-nine, by a majority vote of all the members of said board, appoint
13 an officer to be known as the police justice of the village of Port
14 Chester. The said police justice shall be a resident and elector of the
15 said village and a freeholder therein, and shall hold office for a term
16 of two years from May fifteenth, nineteen hundred forty-nine, or until
17 his successor shall have been appointed and qualified, and shall enter
18 upon the discharge of his duties, within ten days following his appoint-
19 ment. Within sixty days before the expiration of said term bi-annually
20 thereafter the said board of trustees shall, in like manner, appoint a
21 police justice. In case the said board of trustees shall not make said
22 appointment as aforesaid, in the first instance, or in any year when the
23 appointment should be made, then and in that case, the mayor of the

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 village of Port Chester may appoint a police justice for the said term,
2 which appointment shall be evidenced by his filing with the village
3 clerk his designation in writing of the person to fill the said position
4 for the said term. In like manner, there shall also be appointed for the
5 village of Port Chester, [an] TWO acting police [justice] JUSTICES for
6 the said term. From time to time when a vacancy shall occur in either
7 of the said offices the said board of trustees may fill the same, or in
8 case they cannot agree within thirty days after such vacancy shall
9 occur, the mayor of the village may fill the vacancy for the unexpired
10 term.

11 S 3. Civil jurisdiction. The police justice shall have the same juris-
12 diction as a justice of the peace of a town in any civil action or
13 special proceeding in which a resident of the village is a party except
14 that the limitation on amount shall be two thousand dollars. The prac-
15 tice, pleadings, forms and procedure before the police justice shall
16 conform, as nearly as may be, to the practice, pleadings, forms and
17 procedure in like cases under the justice court act. The police justice
18 shall have the same power to punish for a criminal contempt as a justice
19 of the peace, and the practice thereon and the punishment therefor shall
20 be the same as under the justice court act. The town clerk of the town
21 of Rye, in which town the village of Port Chester is situated, shall
22 furnish to such police justice jury lists of the names of such persons
23 as shall be liable to jury duty in such village in the same manner as
24 lists are furnished to the justices of the peace of said town, except
25 when such lists are furnished by a county commissioner of jurors.

26 S 4. Criminal jurisdiction. The said police justice may hold a court
27 of special sessions in said village, and shall have, in the first
28 instance, jurisdiction to hear, try and determine the charges of a
29 misdemeanor committed within said village and triable by a court of
30 special sessions, subject to the right of removal, as provided by the
31 code of criminal procedure, to a court having the authority to inquire
32 by the intervention of a grand jury into offenses committed within the
33 county. Such police justice shall have jurisdiction to take the exam-
34 ination of a person charged with the commission in said village of a
35 crime not triable by a court of special sessions; and also jurisdiction
36 to hear, try and determine charges against a person of being a vagrant,
37 tramp or disorderly person within said village, or of having committed
38 disorderly conduct therein; and to take such proceedings in either of
39 such cases as may be taken by a justice of the peace, with all the
40 powers and subject to all the duties and liabilities of a justice of the
41 peace in respect thereto. Said police justice shall have all the power
42 and authority and be subject to all the duties and liabilities of a
43 justice of the peace in issuing warrants for the arrest of a person
44 charged with the commission of a crime or disorderly conduct in the
45 county of Westchester, but if the offense is charged to have been
46 committed outside the village limits, the person arrested by such proc-
47 ess shall be taken before another magistrate of the town in which such
48 offense is charged to have been committed, and the papers upon which
49 such process shall issue shall be delivered to such magistrate who shall
50 proceed thereon as through such warrant had been issued by him upon such
51 paper. A person arrested upon a criminal warrant issued by a justice of
52 the peace upon a charge of committing a crime or an offense of a crimi-
53 nal nature within said village, or that shall have been found to have
54 been committed within the limits of said village, may be taken before
55 the police justice of said village and the papers upon which the process
56 was issued delivered to such police justice, and he shall proceed there-

1 on, as though said warrant had been issued by him originally. All
2 persons lodged in the Port Chester lockup except those under sentence,
3 or those awaiting a day for trial that has been fixed, may be taken
4 before the said police justice daily by the keeper of the lockup or the
5 officer in possession of a warrant for the said person, and he shall
6 pass upon the legality of the confinement of all such prisoners and
7 order their discharge if justice requires it, and the said police
8 justice shall daily keep a record thereof. A violation of this provision
9 shall be punishable as a misdemeanor. The said police justice shall be
10 subject to the same duties and liabilities and his judgment and
11 proceedings may be appealed from, or reviewed in the same manner and to
12 the same extent as is now or may hereafter be by law provided in the
13 case of justices of the peace or courts of special session. He shall
14 have power to administer oaths, and to take affidavits and acknowledge-
15 ments. Every person appointed police justice of said village shall
16 before entering upon the duties of his office take and file with the
17 clerk of Westchester county the constitutional oath of office. He shall
18 file with the clerk of the county of Westchester a copy of his signature
19 for comparison of all affidavits, acknowledgements or other legal papers
20 signed, sworn to or acknowledged before him as police justice. The
21 police justice, or in case of his absence or inability to act, the
22 acting police justice OR JUSTICES, shall have exclusive jurisdiction in
23 the first instance to hear, try and determine charges of violations of
24 the ordinances of the village of Port Chester.

25 S 5. Acting police [justice] JUSTICES. [The] AN acting police justice
26 shall be a person who has the qualifications herein provided for such
27 office, and shall perform the duties of the said police justice in case
28 of and during his temporary disability or absence. The police justice
29 may make an order that the business of the court requires such acting
30 police justice OR JUSTICES to assist him in the disposition thereof, and
31 thereupon such acting police [justice] JUSTICES shall perform the
32 duties, and shall have and exercise the jurisdiction and powers of the
33 police justice in civil and criminal cases and proceedings concurrently
34 with such police justice.

35 S 6. Clerk, stenographer, marshals and other employees. The board of
36 trustees by a majority vote shall appoint a clerk of the police justice
37 court, a stenographer, two marshals, and such other employees as they
38 deem necessary for the proper conduct of the business of the police
39 justice court, and the board of trustees shall by a majority vote have
40 power to fix the salaries of said employees. The police justice shall be
41 in responsible charge of all matters of the police justice court and
42 shall have all authority necessary for the proper conduct of the busi-
43 ness of said court.

44 S 7. Salaries. The police justice and acting police [justice] JUSTICES
45 shall receive for their service such salaries as shall be fixed by a
46 majority vote of the board of trustees.

47 S 8. Disposition of funds received. The police justice and acting
48 police [justice] JUSTICES shall pay all fines, penalties, fees and other
49 costs received by either of them to the comptroller of the state of New
50 York, as provided by law. The said police justice shall render to the
51 board of trustees of the village of Port Chester, a sworn statement on
52 the first day of each and every month, which shall set forth in detail
53 full particulars of all criminal business transacted during the month,
54 and shall also contain a statement of all fines and forfeitures of bail
55 received by him, and of all court costs and fees received by him.

1 S 9. Courtroom and supplies. The board of trustees of the village of
2 Port Chester shall furnish in said village proper accommodations for the
3 said police justice court and proper furniture and all necessary arti-
4 cles and supplies for the proper conducting of the same; they shall also
5 furnish all blanks and a docket and also an account book wherein the
6 said police justice shall keep a perfect and accurate record of all
7 matters coming before him and all accounts that he may have with the
8 village, which said docket shall be properly indexed, and all such
9 records shall be owned by and be public records of the village of Port
10 Chester, and turned over by the said police justice to his successor.

11 S 10. Hours for opening court. The said police justice shall open
12 court daily, except Sundays and legal holidays at nine o'clock ante
13 meridian or at such other hours as may be designated by him with the
14 prior approval by resolution of the board of trustees, for the trans-
15 action of such business as provided by law; said police justice shall
16 keep such records and accounts, and shall comply with each and all of
17 the requirements of [section one hundred eighty-five of] the village
18 law.

19 S 11. When justice of the peace may be designated. If said police
20 justice or the acting police [justice] JUSTICES shall be absent, or
21 unable to perform said duties, then any justice of the peace of the town
22 of Rye, residing in said village who may be designated by the mayor of
23 said village and evidenced by his filing with the village clerk his
24 designation in writing of such justice of the peace, shall have the same
25 jurisdiction and powers and perform the same duties and be subject to
26 the same regulations and penalties in all respects as said police
27 justice, during the time he shall act. But no justice of the peace shall
28 receive any fee, emolument or pay from any source for the performance of
29 any service in any manner of which said police justice has jurisdiction,
30 except as provided by this act.

31 S 12. Powers of acting police justice. The acting police [justice]
32 JUSTICES shall have all powers and be subject to all the duties imposed
33 herein upon the police justice whenever [he] THEY shall act as such
34 justice.

35 S 13. Process; where service may be made; how directed. The territo-
36 rial jurisdiction of the court shall extend throughout the county of
37 Westchester and it shall have power to send its process and other
38 mandates to any part of the county of Westchester for service or
39 execution in any action or special proceeding over which it has juris-
40 diction and to enforce obedience thereto, and except as otherwise
41 provided in this article, every process and mandate shall be directed
42 either to the sheriff of the county of Westchester or to a marshal of
43 the village of Port Chester.

44 S 14. Death or removal not to impair action. No process, action, judg-
45 ment, execution, special proceeding or criminal proceeding shall abate
46 or be discontinued by reason of the death, disability, removal from
47 office or vacancy in the office of the police justice or acting police
48 justice; but the successor in office of said police justice or acting
49 police justice shall proceed to hear, try and determine and give judg-
50 ment in and upon the same, and upon all matters and things pending
51 before and undecided or not acted upon or indorsed by his predecessor in
52 office, with the same powers, jurisdiction and authority as his prede-
53 cessor had.

54 S 15. Bill of particulars. The procedure for obtaining a copy of the
55 items of an account or a bill of particulars shall be that prescribed in
56 the civil practice act and rules adopted pursuant thereto, except, that

1 the periods of time prescribed by any rule of civil practice relating
2 thereto may be changed by rule of this court. The original of any bill
3 of particulars or items of an account shall be filed with the clerk
4 within the same time that service of a copy thereof must be made on the
5 adverse party or his attorney.

6 S 16. Village marshal; powers and duties. The village marshal shall
7 have such powers and perform such duties as may be prescribed by this
8 act, or by the board of trustees. The village marshal shall in the
9 police justice court perform the same duties as are performed by sher-
10 iffs in courts of record and shall have the power to execute all process
11 of said court in the same manner as the process in courts of record are
12 executed by the sheriff. All acts to be done and performed by the sher-
13 iff may be done by the marshal of the police justice court and all
14 moneys paid by the sheriff or marshal into the court shall be paid to
15 the comptroller to the credit of the action and subject to the order of
16 the court. The marshal of the village shall have and possess the same
17 powers in relation to all matters and proceedings in the court of
18 special sessions of the village and be empowered to perform the same
19 duties therein as the sheriff of Westchester county, or any constable or
20 policeman of the village.

21 The village marshal shall keep an accurate account of all fees
22 received by him, except fees received in civil actions or proceedings,
23 from whom received, the time of receiving the same, and on the first
24 business day of each month shall deposit with the comptroller the amount
25 thereof received in the last preceding month, with a detailed statement
26 of the items thereof, verified by the affidavit of the village marshal
27 to the effect that the same is correct and that it embraces all moneys
28 except fees in civil actions or proceedings received by said village
29 marshal for fees during the period covered by such statement.

30 S 17. Fees of marshal. The said marshal shall be entitled to the same
31 fees as a town constable, as provided in the justice court act of this
32 state, for like service to be paid by the party requiring said service,
33 but the said marshal shall receive no fees or compensation for the
34 service of any criminal process issued out of said police justice court,
35 and it shall be the duty of the police officers of the village to
36 execute all such process.

37 S 18. Fees payable to the court. There shall be paid to the police
38 justice or the clerk of the police justice court the same fees and costs
39 as provided for in the justice court act to be paid to justices of the
40 peace for services rendered in issuance of process of the court, and for
41 the trial of all actions and proceedings.

42 S 19. Judgment docket. The said clerk shall keep in his office a judg-
43 ment docket book, in which he shall docket all judgments rendered in
44 said police justice court.

45 S 20. Costs. In all actions brought in the police justice court of the
46 village of Port Chester costs shall be allowed to the prevailing party
47 in the same manner and in the same amount as provided in the justice
48 court act.

49 S 21. Judicial notice of ordinances. The police justice court and the
50 police justice and acting police [justice] JUSTICES thereof must take
51 judicial notice of all ordinances adopted by the board of trustees so
52 long as the same remain in force and effect and shall also take judicial
53 notice of all ordinances of the village of Port Chester existing on the
54 twenty-eighth day of February, nineteen hundred forty-nine, except as
55 the same may be revised, altered, amended or annulled from time to time

1 as provided in the charter of the village of Port Chester and the
2 village law.

3 S 22. Qualifications. Every person appointed to the office of police
4 justice or acting police justice of the village of Port Chester shall
5 possess the qualifications prescribed by section three of the public
6 officers law. The police justice and acting police [justice] JUSTICES
7 shall be attorneys, each admitted to practice as such in the state of
8 New York for at least five years prior to the date they shall assume
9 office, in accordance with the provisions of this act.

10 S 23. Raising of moneys authorized. The board of trustees of the
11 village of Port Chester is authorized and empowered to raise money by
12 tax to be assessed upon real and personal property within the bounds of
13 said corporation, to be collected from the several owners and occupants
14 thereof annually, such sum as shall be necessary to defray the expenses
15 necessary to carry into effect the provisions of this act; to be known
16 as the police justice fund, and all fines, forfeitures of bail, fees and
17 costs collected by the police justice and acting police [justice]
18 JUSTICES and received by the treasurer of the village of Port Chester
19 through the comptroller of the state of New York, and all moneys
20 received by the village from the county for services of police justice
21 or acting police [justice] JUSTICES shall be applied to the expenses of
22 said court.

23 S 24. Additional powers of justices. All the powers given to the board
24 of trustees of the village of Port Chester, and to the police justice
25 and acting police [justice] JUSTICES, shall be in addition to all powers
26 now given such officers by the charter of the village, the village law,
27 or any general statute, and all acts or parts of acts, and the charter
28 of the village of Port Chester inconsistent herewith are hereby repealed
29 as affecting the village of Port Chester.

30 S 25. Chapter one hundred six of the laws of nineteen hundred six,
31 entitled, "An act creating the offices of police justice and assistant
32 police justice, in the village of Port Chester, in the county of West-
33 chester, and to provide for raising annually an amount sufficient to pay
34 the salaries of said officers," as amended, is hereby repealed.

35 S 26. Saving clause. The repeal of chapter one hundred six of the laws
36 of nineteen hundred six by this act, shall not affect or impair any act
37 done or right accruing, accrued or acquired, or liability, forfeiture or
38 penalty incurred prior to the effective date of this act, under or by
39 virtue of any law so repealed, but the same may be asserted, enforced,
40 prosecuted or inflicted, as fully and to the same extent as if such law
41 had not been repealed; nor shall this act create a vacancy in any office
42 or employment. All actions and proceedings commenced under or by virtue
43 of the law so repealed and pending when this act becomes effective, may
44 be prosecuted in the same manner and with the same effort as they might
45 under laws then existing, unless it shall be otherwise specifically
46 provided. Nothing in this act contained shall be construed as affecting
47 any existing provisions of law so far as provisions apply to any portion
48 of the state, other than the village of Port Chester.

49 S 27. This act shall take effect immediately.

50 S 2. This act shall take effect immediately.