S T A T E O F N E W Y O R K

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:

Section 1. Chapter 851 of the laws of 1949, relating to establishing a police justice court in the village of Port Chester, sections 4 and 10 as amended by chapter 447 of the laws of 1962 and section 6 as amended by chapter 410 of the laws of 1965, is amended to read as follows:

Section 1. Police justice court established. There shall be within the village of Port Chester a court known and designated as the police justice court of Port Chester, presided over by a police justice, appointed as hereinafter provided, with powers and jurisdiction as hereinafter set forth.

S 2. Creating police justice. The board of trustees of the village of Port Chester, shall, on or before May fifteenth, nineteen hundred forty-nine, by a majority vote of all the members of said board, appoint an officer to be known as the police justice of the village of Port Chester. The said police justice shall be a resident and elector of the said village and a freeholder therein, and shall hold office for a term of two years from May fifteenth, nineteen hundred forty-nine, or until his successor shall have been appointed and qualified, and shall enter upon the discharge of his duties, within ten days following his appointment. Within sixty days before the expiration of said term bi-annually thereafter the said board of trustees shall, in like manner, appoint a police justice. In case the said board of trustees shall not make said appointment as aforesaid, in the first instance, or in any year when the 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.

LBD11636-01-1

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

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

S 4. Criminal jurisdiction. The said police justice may hold a court of special sessions in said village, and shall have, in the first instance, jurisdiction to hear, try and determine the charges of a misdemeanor committed within said village and triable by a court of special sessions, subject to the right of removal, as provided by the code of criminal procedure, to a court having the authority to inquire by the intervention of a grand jury into offenses committed within the county. Such police justice shall have jurisdiction to take the examination of a person charged with the commission in said village of a crime not triable by a court of special sessions; and also jurisdiction to hear, try and determine charges against a person of being a vagrant, tramp or disorderly person within said village, or of having committed disorderly conduct therein; and to take such proceedings in either of such cases as may be taken by a justice of the peace, with all the powers and subject to all the duties and liabilities of a justice of the peace in respect thereto. Said police justice shall have all the power and authority and be subject to all the duties and liabilities of a justice of the peace in issuing warrants for the arrest of a person charged with the commission of a crime or disorderly conduct in the county of Westchester, but if the offense is charged to have been committed outside the village limits, the person arrested by such process shall be taken before another magistrate of the town in which such offense is charged to have been committed, and the papers upon which such process shall issue shall be delivered to such magistrate who shall proceed thereon as through such warrant had been issued by him upon such paper. A person arrested upon a criminal warrant issued by a justice of the peace upon a charge of committing a crime or an offense of a criminal nature within said village, or that shall have been found to have been committed within the limits of said village, may be taken before the police justice of said village and the papers upon which the process was issued delivered to such police justice, and he shall proceed there-

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

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

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

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

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

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

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

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

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

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

S 14. Death or removal not to impair action. No process, action, judgment, execution, special proceeding or criminal proceeding shall abate or be discontinued by reason of the death, disability, removal from office or vacancy in the office of the police justice or acting police justice; but the successor in office of said police justice or acting police justice shall proceed to hear, try and determine and give judgment in and upon the same, and upon all matters and things pending before and undecided or not acted upon or indorsed by his predecessor in office, with the same powers, jurisdiction and authority as his predecessor had.

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

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

S 16. Village marshal; powers and duties. The village marshal shall have such powers and perform such duties as may be prescribed by this act, or by the board of trustees. The village marshal shall in the police justice court perform the same duties as are performed by sheriffs in courts of record and shall have the power to execute all process of said court in the same manner as the process in courts of record are executed by the sheriff. All acts to be done and performed by the sheriff may be done by the marshal of the police justice court and all moneys paid by the sheriff or marshal into the court shall be paid to the comptroller to the credit of the action and subject to the order of the court. The marshal of the village shall have and possess the same powers in relation to all matters and proceedings in the court of special sessions of the village and be empowered to perform the same duties therein as the sheriff of Westchester county, or any constable or policeman of the village.

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

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

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

S 19. Judgment docket. The said clerk shall keep in his office a judgment docket book, in which he shall docket all judgments rendered in said police justice court.

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

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

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

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

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

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

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

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

S 27. This act shall take effect immediately.

S 2. This act shall take effect immediately.