

See letter to Monroe Osborn
in Correspondence file.

An act authorizing the Chief Justice to designate any district judge or superior judge to assist any other superior judge in Oklahoma or to act as temporary judge in case of physical disqualification of superior judge, upon request and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

In case of the illness of the judge of any superior court elected or appointed in any county or if for any other cause he shall be unable to preside in the county in which he was elected or appointed the Chief Justice may designate any district judge or other superior judge in the State to hold any term of court and settle all pleadings and perform the other duties as judge of said court in said county in lieu of the judge elected or appointed to hold the courts of said county. Whenever the public business shall require it the Chief Justice may appoint any district judge of the State to hold court in any ~~district~~ county and said judge so appointed may sit with the regularly elected superior judge in any county separately at the same time, provided however, that the superior judge, if himself not ^{dis}qualified, shall first request such appointment or designation.

(Emergency)

Section 13,554 O.S. 1931 - Art. 7 Sec. 2 of Oklahoma Constitution provided in part:

"The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all commissions and boards created by law".

Section 13,561 O.S. 1931 - Art. 7 Sec. 9, provides for appointment by the Chief Justice of a district judge from another district to act in lieu of the judge elected where the latter is ill or other disqualified. The language of this section is probably not broad enough to include specific control over the superior courts.

There is no provision in our statute either directly giving or denying the right of the Supreme Court or the Chief Justice to fill a temporary vacancy in the superior court. Section 23 O.S. 1931 gives the Supreme Court authority to apply all of its rules to the superior court. I find no rule on the subject, however. There is no case in the state directly on this question.

In State ex rel. Freeling, Attorney General vs. Kight, County Judge, 152 P. 362, the court says:

"By Section 2 Article 7 of the Constitution the Supreme Court is given jurisdiction to exercise a general superintending control over all inferior courts and all commissions and boards created by law, and this jurisdiction is a separate and distinct grant from its appellate jurisdiction."

The case further holds that the power is co-extensive with that of King's Bench at common law. The other parts of Section 13552 have been before the Supreme Court often but this particular part of it has not been tested or clarified by decisions.

Certainly the legislature could place this power in the Chief Justice. I am of the opinion that the Supreme Court has the power anyway.