

2908.

APIARIES — PROBATE COURT, ANY COUNTY, HAS ORIGINAL JURISDICTION TO PROSECUTE IN RE INSPECTION OF APIARIES — SECTIONS 1164 TO 1165-2 AND 1166 TO 1169-1 G. C.

SYLLABUS:

Under the provisions of Section 1169-1, General Code, the probate court of any county has original jurisdiction in prosecutions under the provisions of law relating to the inspection of apiaries, Sections 1164 to 1165-2, inclusive, and Sections 1166 to 1169-1, inclusive, General Code.

Columbus, Ohio, October 18, 1940.

Hon. John T. Brown, Director of Agriculture,
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your recent request for my opinion as follows:

“Section 1169-1 of the General Code of Ohio specifically states the Probate Court of any county as having original jurisdiction in the prosecutions of violation of the apiary inspection law.

In presenting evidence of violations of the said law to the Probate Court in Trumbull County the judge thereof was of the opinion this section of the law had been nullified by a later act of the Legislature whereby all criminal actions were removed from the jurisdiction of the Probate Courts. Since the section on prosecution of the apiary inspection act mentions no other alternative, we are requesting an opinion relative to the jurisdiction of filing complaints in violation of the apiary inspection law.”

The provisions of law relating to the examination and inspection of apiaries are contained in Sections 1164 to 1165-2, inclusive, and Sections 1166 to 1169-1, inclusive, General Code. With reference to such law, Section 1169-1, General Code, provides in part:

“The probate court of any county shall have original jurisdiction in prosecutions under the provisions of this act of violation occurring within that county. Such court shall be open at all times for such purposes regardless of the terms fixed therein for the trial of criminal cases, and the complainant shall not be required to give security for costs. * * * ”

By virtue of the above provision which became effective July 20, 1923 (110 O. L. 303), the probate court is given specific jurisdiction to hear and determine prosecutions for violation of the apiary inspection law.

It is true that probate courts do not have general criminal jurisdiction. Such courts formerly had general criminal jurisdiction in prosecutions for misdemeanors by virtue of Section 13422-4, General Code, which provided:

“The probate court shall have current jurisdiction with the court of common pleas in all misdemeanors and all proceedings to prevent crime.”

Section 13422-4, General Code, was repealed by Section 10512-23, General Code (114 O. L. 475), which became effective January 1, 1932, and which provides:

“That existing sections 1580 to 1604-6 inclusive, 8024 to 8030-3 inclusive, 8573 to 8616 inclusive, 8622, 10492 to 10770 inclusive, 10772 to 10800 inclusive, 10802 to 10958 inclusive, 10960 to 10966 inclusive, 10969 to 11037 inclusive, 11199 to 11214-1 inclusive, 11922 to 11924 inclusive, 13422-4 and 13425-1 to 13425-22 inclusive, of the General Code be, and the same are hereby repealed.”

However, it will be noted that in the forgoing section, the Legislature did not repeal Section 1169-1, General Code. Therefore, since probate courts derive their authority to hear prosecutions for violations of the apiary laws from Section 1169-1, General Code, and not from Section 13422-4, General Code, such jurisdiction remains vested in the probate court.

Therefore, in specific answer to your inquiry, I am of the opinion that under the provisions of Section 1169-1, General Code, the probate court of any county has original jurisdiction in prosecutions under the provisions of law relating to the inspection of apiaries, Sections 1164 to 1165-2, inclusive, and Sections 1166 to 1169-1, inclusive, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.