

trial and in writing waives a jury and submits to be tried by the justice of the peace. Therefore, in the instant case, the justice of the peace did not have final jurisdiction for the following reasons:

1. The motor vehicle act does not confer final jurisdiction on justices of the peace over prosecutions for the violation of its provisions nor is the offense in question enumerated in section 13422-3, General Code.

2. The accused was not brought before the justice of the peace on complaint of the party injured.

3. The penalty for the offense charged does not exceed a fine of fifty dollars and the accused would not be entitled to a jury trial and, consequently, could not waive a jury.

If, however, the party injured files the affidavit and the accused pleads guilty, the justice of the peace has final jurisdiction, or if the misdemeanor charged carries as a penalty a fine in excess of fifty dollars, as a subsequent offense under section 12618-2 of the General Code does, then the accused is entitled to a jury trial, and if he waives that right, as provided by section 13433-10 of the General Code, he gives the justice of the peace final jurisdiction.

Therefore, in specific answer to your question, I am of the opinion that if a person arrested for operating a motor vehicle with dealer's license plates in violation of section 12618-2 of the General Code is brought before a justice of the peace, and in writing waives a jury, such justice of the peace would have no jurisdiction to fine said person, whether a plea of guilty or not guilty was entered to the charge.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3157.

APPROVAL, LEASE OF ABANDONED HOCKING CANAL LANDS IN THE CITY OF NELSONVILLE, TO THE CITY OF NELSONVILLE, OHIO.

COLUMBUS, OHIO, September 1, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease executed by you in your official capacity as Superintendent of Public Works and as Director of said department, to the City of Nelsonville, Ohio, in and by which there is leased and demised to said city for the stated term of fifteen years four certain tracts or parcels of abandoned Hocking Canal lands in the City of Nelsonville, which parcels of land are more particularly described in the lease instrument.

The question of the authority of the Superintendent of Public Works to execute this lease on the terms therein provided, is one that has given me some difficulty. Inasmuch as the City of Nelsonville, by its failure to act under the provisions of Senate Bill No. 214 enacted by the 89th General Assembly, 114 O. L. 554, the same being an act to authorize the City of Nelsonville to enter upon, improve and occupy a portion of the Hocking Canal for street, sewerage

and other municipal purposes, waived its rights under said act, the authority of the Superintendent of Public Works to execute this lease must be found in statutory provisions relating to the lease of canal lands generally or to those relating to the lease of the lands of this particular canal system.

House Bill No. 417, which was enacted by the 88th General Assembly under date of April 5, 1929, 113 O. L. 521, amending the prior act of May 31, 1911, 102 O. L. 490, provides for the lease or sale of abandoned Hocking Canal lands now owned by the State in Fairfield, Hocking and Athens Counties, Ohio. However, this act provides that leases executed under its provisions shall be in strict conformity with the provisions of sections 13965, et seq., General Code, relating to the lease of canal lands generally. The provisions of sections 13965, et seq., General Code, do not authorize the execution of canal land leases otherwise than upon an annual rental of 6% upon the appraised value of the property leased. It follows that leases cannot be legally executed under the provisions of the act of April 5, 1929, relating to the lease of Hocking Canal lands in Fairfield, Hocking and Athens Counties otherwise than upon a 6% rental basis. It does not appear from an examination of the provisions of the lease here in question that any appraisal was made by the Superintendent of Public Works of the parcels of Hocking Canal lands described in this lease. On the contrary, it appears that the annual rental of one hundred dollars provided for in this lease is little more than a nominal rental. In any event, it is quite clear that the rental provided for in this lease is not one determined on an appraisal basis. It must be concluded, therefore, that no authority is given by this act for the execution of the lease here in question upon the terms therein provided for.

It is noted from the provisions of this lease that the parcels of land described therein are leased and demised to the City of Nelsonville primarily for park and recreational purposes. This fact suggests the consideration of the Farnsworth Act, so-called, the same being Amended Substitute Senate Bill No. 69, enacted by the 89th General Assembly under date of April 8, 1931, 114 O. L. 518. By this act, municipalities and other political subdivisions are authorized to take leases of canal lands for park and recreational purposes. It appears from the provisions of this act that municipalities and other political subdivisions have as against other persons generally a prior right to take leases of abandoned canal lands within a period of two years from the effective date of said act. The lease here in question was not applied for or executed within that period of time. However, as I construe this law, it does not prevent the Superintendent of Public Works from executing a lease of abandoned canal lands to a municipality or other political subdivision for park and recreational purposes, for the nominal annual rental therein provided for in case the Superintendent of Public Works sees fit to execute the lease to such municipality or other political subdivision, rather than to some other corporation or person under other statutory provisions relating to the lease of such abandoned canal lands. In this view, I am of the opinion that your authority to execute the lease here in question can be sustained if, as a matter of fact, the primary and principal purpose for which the City of Nelsonville is to use these lands under the lease, is to develop and use these lands as parks and as places of public recreation. In this connection, it is noted from the provisions of the lease that one of the purposes for which the lands leased are to be used, is for the construction of a highway thereon. As to this, I understand, however, that the only roadways that are to be constructed on the leased lands are certain gravel roads which are to be laid down simply as a part of the landscaping and improvement of the lands for park and recreational purposes. Although under the provisions of the Farnsworth Act no authority is therein

given for the execution of leases to municipalities or other political subdivisions solely for street or highway purposes, I am of the view that where the roadways to be constructed are such only as will make the property more available and useful for park and recreational purposes and the use of the same will be incidental to the use of the lands for the primary purposes referred to in the act, the intended purpose of such municipality or other political subdivision to construct such roadways will not affect your authority to execute a lease of this kind.

Finding, as I do, that this lease has been properly executed by yourself, as Superintendent of Public Works, and by the lessee above named, by the hand of its mayor, acting pursuant to the authority of a resolution of the Council of said city, the same is hereby approved, as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3158.

APPROVAL, RESERVOIR LAND LEASE IN FAIRFIELD COUNTY, OHIO
—CHRISTIAN FAELCHLE, COLUMBUS, OHIO.

COLUMBUS, OHIO, September 4, 1934.

HON. EARL H. HANEFELD, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication with which you submit for my examination and approval a reservoir land lease, in triplicate, executed by the Conservation Commissioner to one Christian Faelchle of Columbus, Ohio.

By this lease instrument there is leased and demised to the lessee above named, for a term of fifteen years, the right to occupy and use for cottage site and docklanding purposes, only, the inner slope and waterfront and the outer slope of the reservoir embankment back to the State ditch that is included in the north half of Embankment Lot No. 23, south of Lakeside, as laid out by the Ohio Canal Commission in 1905, and being part of the Southeast Quarter of Section 21, Town 17, Range 18, Fairfield County, Ohio.

Upon examination of this lease, I find that the same has been properly executed by the Conservation Commissioner on behalf of the State of Ohio, and by Christian Faelchle, the lessee named therein.

I further find upon examination of the provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with the provisions of section 471, General Code, and with other statutory provisions relating to leases of this kind.

I am accordingly approving this lease as to legality and form, as is evidenced by my approval endorsed on the lease and upon the duplicate and triplicate copies thereof, all of which are herewith enclosed.

Respectfully,

JOHN W. BRICKER,

Attorney General.