

OPINION NO. 74-001

Syllabus:

1. A mayor who is responsible for village finances may adjudicate guilt on a plea of not guilty, or accept a plea of guilty or no contest to a violation of a village ordinance and render a sentence thereon which includes a fine only where the village is able to show that the mayor's court provides merely de minimis revenue to the funds of the municipality.

2. A mayor who is responsible for village finances may accept a plea of guilty or a plea of no contest to a violation of a village ordinance and render a sentence thereon which includes a fine, even if the mayor's court provides substantial revenue to the funds of the municipality, only where the sentence is mandatory and does not allow for the exercise of discretion by the mayor in his capacity as a judge.

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To: Donald L. Jones, Washington County Pros. Atty., Marietta, Ohio  
By: William J. Brown, Attorney General, January 10, 1974

I have before me your request for my opinion, which reads as follows:

In view of Tumey v. Ohio 47 S. Ct. 437  
and Ward v. Village of Monroeville, Ohio, 93  
S. Ct. 80 (1972):

(1) Can a mayor, who is responsible for village finances and whose court provides a portion of village funds accept a plea of guilty to a violation of village ordinance and render a sentence thereon which includes a fine?

(2) Can a mayor, who is responsible for village finances and whose court provides a portion of village funds accept a plea of no contest to a violation of village ordinance and hear and determine the case thereon which may result in a finding of guilty and a fine?

(3) Can a mayor, who is responsible for village finances and whose court provides a portion of village funds accept a plea of not guilty to a violation of village ordinance and hear and determine the case which may result in a finding of guilty and a fine?

R.C. 1905.01, which provides for the creation and jurisdiction of the mayor's court, reads as follows:

"In all municipal corporations not having a police court and not being the site of a municipal court nor a place where Portage County municipal court sits as required pursuant to section 1901.021 of the Revised Code or by designation of the judges pursuant to section 1901.021 of the Revised Code, the mayor of such municipal corporation has jurisdiction to hear and determine any prosecution for the violation of an ordinance of the municipal corporation, and has jurisdiction in all criminal causes involving moving traffic violations occurring on state highways located within the boundaries of the municipal corporation, subject to the limitations of sections 2937.08 and 2938.04 of the Revised Code.

In keeping his docket and files, the mayor shall be governed by the laws pertaining to county courts."

The recent Supreme Court case of Ward v. Village of Monroeville, 409 U.S. 57, 34 L. Ed. 2d 267, 93 S. Ct. 80 (1972), has cast a shadow of doubt upon the constitutionality of the whole system of mayors' courts established pursuant to R.C. 1905.01 et seq. Justice Brennan, speaking for the majority of the Court, held that an accused who was compelled to stand trial for traffic offenses before the mayor, who was responsible for village finances and whose court through fines, forfeitures, costs and fees provided a substantial portion of village funds, was denied a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

The Supreme Court had held earlier, in the case of Tumey v. State of Ohio, 273 U.S. 510, 47 S. Ct. 437 (1927), that it was a denial of due process to subject the liberty and property of a defendant to the judgment of a court, the judge of which had a direct, personal and substantial pecuniary interest in reaching a conclusion against him in his case.

The fact that the mayor in Tumey v. State of Ohio, supra, shared directly in the fees and costs of each case, however, did not define the limits of the holding. The precise holding of Ward v. Village of Monroeville, supra, was foreshadowed by the language of Chief Justice Taft, who, speaking for the Court in Tumey v. State of Ohio, supra, stated at 532 and 533 as follows:

"But the pecuniary interest of the mayor in the result of his judgment is not the only reason for holding that due process of law is denied to the defendant here.

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\* \* \* [I]t [the trial] offers to the village council and its officers a means of substantially adding to the income of the village to relieve it from further taxation. The mayor is the chief executive of the village. He supervises all the other executive officers. He is charged with the business of looking after the finances of the village. It appears from the evidence in this case, and would be plain if the evidence did not show it, that the law is calculated to awaken the interest of all those in the village charged with the responsibility of raising the public money and expending it, in the pecuniarily successful conduct of such a court. The mayor represents the village and cannot escape his representative capacity. On the other hand, he is given the judicial duty, first, of determining whether the defendant is guilty at all; and, second, having found his guilt, to measure his punishment between \$100 as a minimum and \$1,000 as a maximum for first offenses, and \$300 as a minimum and \$2,000 as a maximum for second offenses. With his interest as mayor in the financial condition of the village and his responsibility therefor, might not a defendant with reason say that he feared he could not get a fair trial or a fair sentence from one who would have so strong a motive to help his village by conviction and a heavy fine?"

It is apparent that the Supreme Court, in deciding both of these cases, was deeply concerned with maintaining the impartiality of those persons placed in the position of adjudicating disputes. Justice Corrigan, in his dissent from the Ohio Supreme Court decision affirming the conviction of appellant in Ward v. Village of Monroeville, 27 Ohio St. 2d 179, 189 (1971), best summarizes the compelling reasons for this concern as follows:

"It is with profound mindfulness of the unrest with laws and the enforcement of laws in our country today that I reemphasize the importance of public confidence in the impartiality of all courts. It seems to this member of the court that this confidence, which we strive to merit in the judiciary, may be easily eroded with a mayor's court of this type. This observation is not to be considered in any way as a reflection on the integrity or capacity of the mayor who presided as judicial officer at this trial. But I am fearful that a defendant brought into a mayor's court may, with reason and persuasion, rightly complain that he was not likely to get a fair trial or a fair sentence from a judge who, as chief executive, is

responsible for the financial condition of the village and who has the chief of police and other police officers under his supervision; who passes on the latter's credibility in trials before him; who levies fines which total in some years up to half of the revenue income of the village; who is not an attorney."

The test to be applied in determining whether or not a judicial proceeding is held before a disinterested and impartial judicial officer was first set forth in Tumey v. State of Ohio, supra, and later restated by Mr. Justice Brennan in Ward v. Monroeville, supra, at 60 as follows:

"The test is whether the mayor's situation is one 'which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear, and true between the state and the accused \* \* \*.'"

The Court in Ward v. Village of Monroeville, supra, apparently felt that if the mayor's court contributed a substantial portion of revenue to the village, a presumption of bias will arise for it held at 60 as follows:

"Plainly that 'possible temptation' may also exist when the mayor's executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court. This too is a 'situation in which an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, [and] necessarily involves a lack of due process of law in the trial of defendants charged with crimes before him.'"  
(Emphasis added.)

Theoretically, therefore, the issue of constitutionality must focus in part upon the level of contribution made by the mayor's court to village finances. One may readily infer from the language used by the court that if the mayor's court provides only a de minimis portion of the revenue of the municipality, the presumption of bias will not arise and due process of law, as guaranteed by the Fourteenth Amendment, is not violated.

As a practical matter, however, it is important to realize that the revenue produced from a mayor's court does, in most instances, provide the municipality with a substantial portion of its funds. Under the present circumstances, it would be rather extraordinary for a mayor's court to provide the municipality with only a de minimis amount of revenue. Hence, it would appear that in the future the burden will be upon the city to demonstrate that only minimal revenue is raised through a mayor's court.

In light of the foregoing, I think it clear that a mayor may adjudicate guilt on a plea of not guilty, or accept a plea of guilty or no contest to a violation of a village ordinance and render a sentence which includes a fine only where the village is able to prove the mayor's court provides de minimis revenue to the funds of the municipality.

In this respect, it is important to note that the holdings in both Tumey v. State of Ohio, supra, and Ward v. Village of Monroeville, supra, extend only to those instances in which the accused has chosen to contest the charges against him. In delineating the precise scope of Ward v. Village of Monroeville, supra, Justice Brennan stated in footnote two at 61 as follows:

"The question presented on this record is the constitutionality of the Mayor's participation in the adjudication and punishment of a defendant in a litigated case where he elects to contest the charges against him. We intimate no view that it would be unconstitutional to permit a mayor or similar official to serve on essentially a ministerial capacity in a traffic or ordinance violation case to accept a free and voluntary plea of guilty or nolo contendere, a forfeiture of collateral, or the like." (Emphasis added.)

Thus, the holding of Ward v. Village of Monroeville, supra, does not question the constitutionality of a procedure before a mayor's court in which the accused does not wish to contest the charges against him irrespective of what portion of the village income is derived from the mayor's court. In such cases the need for an impartial disinterested arbitrator is obviated. Justice Brennan refers to the function of a mayor in a situation of this type as one that is essentially ministerial. A ministerial act is simply one which the law prescribes and defines with such precision and certainty as to leave nothing to the exercise of discretion or judgment. This conclusion, however, applies only to the adjudication of guilt. The levying of a fine is a separate question.

Although it is clear that a mayor responsible for a substantial portion of village funds may not adjudicate the issue of the guilt of the accused, the Court in Ward v. Village of Monroeville, supra, failed to state expressly whether or not a determination by the mayor of the amount of the fine to be imposed upon the accused is, in and of itself, violative of due process. One may readily infer from the language of the opinion, however, that a presumption of bias will arise if a mayor, who is responsible for a substantial portion of village finances, possesses any discretion in determining the amount of the fine to be imposed. It is clear that a mayor possessing such discretion performs a function which transcends the bounds of that which is "essentially ministerial."

Moreover, this inference is supported by the case of Tumey v. State of Ohio, supra. In discussing the discretion of the mayor in determining the amount of the fine to be imposed with respect to the issue of bias, Chief Justice Taft stated at 535 as follows:

"It is finally argued that the evidence shows clearly that the defendant was guilty and that he was only fined \$100 which was the minimum amount, and therefore that he cannot complain of a lack of due process, either in his conviction or in the amount of the judgment. The plea was not guilty and he was convicted. No matter what the evidence was against him,

he had the right to have an impartial judge. He seasonably raised the objection, and was entitled to halt the trial because of the disqualification of the judge, which existed both because of his direct pecuniary interest in the outcome, and because of his official motive to convict and to graduate the fine to help the financial needs of the village. There were thus presented at the outset both features of the disqualification." (Emphasis added.)

Thus, neither the issue of guilt nor the amount of the fine may be determined by a mayor, who is responsible for a substantial portion of village finances.

I think it clear, therefore, that a mayor who is responsible for village finances may accept a plea of guilty or accept a plea of no contest to a violation of a village ordinance and render a sentence thereon which includes a fine only where the sentence is mandatory and leaves no room for discretion by the mayor in his capacity as a judge.

In specific answer to your question, it is my opinion and you are so advised, that:

1. A mayor who is responsible for village finances may adjudicate guilt on a plea of not guilty, or accept a plea of guilty or no contest to a violation of a village ordinance and render a sentence thereon which includes a fine only where the village is able to show that the mayor's court provides merely de minimis revenue to the funds of the municipality.

2. A mayor who is responsible for village finances may accept a plea of guilty or a plea of no contest to a violation of a village ordinance and render a sentence thereon which includes a fine, even if the mayor's court provides substantial revenue to the funds of the municipality, only where the sentence is mandatory and does not allow for the exercise of discretion by the mayor in his capacity as a judge.