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SYLLABUS:

1. By the terms of Section 1907.012, Revised Code, a county court has jurisdiction of all misdemeanors.

2. The grant of jurisdiction to county courts under Section 1907.012, Revised Code, does not oust a common pleas court of its original concurrent jurisdiction in misdemeanor cases.

Columbus, Ohio, July 23, 1963

Hon. James L. Frey
Prosecuting Attorney
Fulton County
Wauseon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Since January 1, 1963, County Courts have been courts of record. Therefore, I would like to know if County Courts now have final jurisdiction in all misdemeanor cases. Secondly, if County Courts do have final jurisdiction in all misdemeanors, can the Grand Jury consider misdemeanor cases?”

Section 1907.012, Revised Code, provides:

“In addition to the jurisdiction granted a county court by Chapters 1090., 1917., 1919., 1923., 2329., 2931., 3111., 3305., 3707., 3771., 3773., 3781., 4143., 4513., and other chapters of the Revised Code, a county court shall have jurisdiction in motor vehicle violations and all other misdemeanors.

“Effective January 1, 1963, county courts shall be considered courts of records for all purposes of law.”

Attention should also be directed to Section 2931.03, Revised Code, which reads:

“The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the *exclusive jurisdiction* of which is vested in courts inferior to the court of common pleas.”

(Emphasis added)

Prior to January 1, 1963, a county court was required to certify a case to a court of record under certain circumstances. In respect thereof the second branch of the syllabus in Opinion No. 1548, Opinions of the Attorney General for 1960, holds:

“2. In prosecutions under Section 3773.22, Revised Code, a county court has original, but not exclusive, jurisdiction and where in such a case the defendant is entitled to a trial by jury, and does not waive such right, the case must be certified to a court of record as provided in Section 2937.08, Revised Code.”

Note might be taken of the following statement in 14 Ohio Jurisprudence 2d, Courts, Section 22, page 449:

“A court of record is generally defined as a court whose judgments and proceedings import absolute verity and, until reversed, protect all who obey them. But no comprehensive definition as to what constitutes a court of record has been framed by the Ohio courts. * * *”

It is clear that the jurisdiction of a county court under Section 1907.012, Revised Code, has been increased or extended. More particularly, in view of the last paragraph thereof, no occasion now exists for a case to be certified to a court of record as was heretofore required when a jury trial was not waived. In this sense, a county court has “final jurisdiction.”

There is a distinction between “final jurisdiction” and “exclusive jurisdiction.” This is discussed in the above-mentioned 1960 Opinion of the Attorney General who directed attention to *State v. Houser*, 73 Ohio App., 115 (1943) and quoted the following therefrom in said opinion:

“The use of the word ‘final’ to describe the jurisdiction of the mayor’s court is not sufficient to preclude

the general original jurisdiction of the Common Pleas Court as granted by Section 13422-5, General Code. That section when read in the light of Section 13436-5, General Code, which invests the Common Pleas Court with general authority, through the grand jury, 'to inquire of and present all offenses committed within the county,' it is expressive of an intent on the part of the Legislature to vest such jurisdiction in the Common Pleas Court that it cannot lightly be disregarded. The jurisdiction so clearly granted cannot be taken away by an inference or implication. *Small v. State*, 128 Ohio St., 548, 192 N.E., 790."

(Section 13422-5, General Code, referred to in the above quotation is presently Section 2931.03, Revised Code).

The syllabus of *Small v. State*, 128 Ohio St., 548 (1934), points up that there is a distinction between *final* jurisdiction and *exclusive* jurisdiction. It reads:

"The Court of Common Pleas has original jurisdiction of a prosecution arising under Section 13194, General Code. The word 'final,' as used in that section to describe the jurisdiction of a justice of the peace, is not the same as, or the equivalent of, the word 'exclusive' as used in Section 13422-5, General Code, to limit the jurisdiction of the Court of Common Pleas. The grant of final jurisdiction to a justice of the peace does not deprive the Common Pleas Court of its original concurrent jurisdiction."

In this case, the Grand Jury indicted for a misdemeanor.

A county court is inferior to a court of common pleas. By virtue of Section 2931.03, Revised Code, the only limitation on the original jurisdiction of the court of common pleas is when *exclusive* jurisdiction of "minor offenses" is vested in inferior courts. This quoted phrase has reference to misdemeanors. See *State v. Carpenter*, 87 Ohio App., 247. The grant of final jurisdiction to a justice of the peace does not deprive the common pleas court of its original concurrent jurisdiction. *Small v. State*, 128 Ohio St., 548. There is no apparent reason why county courts, which have superseded justices of the peace, are not also subject to this same rule of law.

Section 1907.012, Revised Code, does not, in express terms, vest a county court with *exclusive* jurisdiction in misdemeanor cases. I consider it unnecessary for the purposes of this opinion

to determine whether such court is conferred with exclusive jurisdiction of any specific minor offense, in which event the jurisdiction of the common pleas court would be subject to limitation.

It is clear that a court of common pleas is not deprived of original jurisdiction of minor offenses by reason of a county court now being a court of record, and it follows that a Grand Jury can consider misdemeanor cases. 106 A.L.R. 1384, 24 American Jurisprudence, 856.

In specific answer to your questions, therefore, it is my opinion :

1. By the terms of Section 1907.012, Revised Code, a county court has jurisdiction of all misdemeanors.

2. The grant of jurisdiction to county courts under Section 1907.012, Revised Code, does not oust a common pleas court of its original concurrent jurisdiction in misdemeanor cases.

Respectfully,
WILLIAM B. SAXBE
Attorney General