these dates. Section 5678 implies as much when it prescribes, in part, that 'if one-half the taxes charged against an entry of real estate is not * * * collected by distress or otherwise prior to the February settlement,' a penalty shall accrue. So that so far as the question of penalty on real estate is concerned your general question is answered by the statement that this penalty is not chargeable on account of such taxes paid to or collected by the county treasurer prior to the February settlement, though received after the time limited for the 'payment' of taxes."

I agree with these conclusions and with said 1920 opinion as modified in the opinion of this department, reported in Opinions, Attorney General, 1921, p. 135, and you are therefore advised that the ten per cent penalty upon delinquent real estate taxes, provided for in Section 5678, General Code, does not accrue until the February settlement between the county auditor and county treasurer.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1665.

STARK COUNTY—JUSTICE OF THE PEACE—JURISDICTION.

SYLLABUS:

1. *Any justice of the peace duly elected in any township of Stark County, Ohio, has jurisdiction in criminal cases throughout the county in which he is elected and where he resides, and his authority to hear and determine a criminal case in the manner prescribed by law, is not limited to the township for which he is elected and where he resides.*

2. *An affidavit in a criminal case may be made and filed before any justice of the peace duly elected in any township of Stark County, Ohio, in any township, in such county, and such justice may issue a warrant in such township, regardless of whether or not it be the township in which such justice of the peace was elected and where he resides.*

COLUMBUS, OHIO, February 3, 1928.

HON. HENRY W. HARTER, JR., *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This will acknowledge your letter dated January 30, 1928, which reads:

"Your opinion is desired in regard to the following set of facts:

By special act of Legislature the office of justice of the peace has been abolished in Canton and Plain Townships in Stark County; likewise in Lexington, Washington, Perry and Tuscarawas Townships, and the jurisdiction of justice of the peace lodged in municipal courts in Canton, Alliance and Massillon.

There are at present two justices of the peace maintaining offices in the City of Canton who are exercising the criminal jurisdiction of their offices, one of them being elected for Lake Township and the other being elected for Lawrence Township, neither of which townships is affected

by any of the municipal court acts. These justices of the peace are administering oaths to prosecuting witnesses in the City of Canton which is situated in Canton Township, issuing warrants on criminal affidavits, conducting preliminary examinations, and binding defendants over to common pleas and to the probate courts.

Query 1: May a justice of the peace exercise his criminal jurisdiction in any other township than the one in which he is elected?

Query 2. May a justice of the peace go outside of the township in which he is elected and receive the preliminary affidavit in a criminal case and issue a warrant there, providing the examining court is held by him in the township for which he is elected?"

On March 26, 1925, (111 v. 303) the Legislature passed an act in part entitled:

"An Act—To establish a municipal court for the City of Canton, Stark County, Ohio, and fixing the jurisdiction thereof, providing for judges and other necessary officers of said court and defining their powers and duties and to repeal sections * * * of the General Code."

Section 37 thereof, now Section 1579-702, General Code, provides:

"All proceedings, judgments, executions, dockets, papers, monies, property and persons subject to the jurisdiction of courts of all justices of the peace for Canton and Plain Townships in Stark County, 'on' the expiration of the term of office of the last justice of the peace in such townships shall be turned over to the municipal court hereby created, and all jurisdiction and powers of such justices of the peace shall thereupon be vested in the municipal court; and thereafter such causes shall proceed in the municipal court as if originally instituted therein, the parties making such amendments to their pleadings as required to conform to the rules of said court; and such courts of said justices of the peace, and all jurisdiction and powers thereof, shall thereupon be abolished and wholly cease, and no justices of the peace or constables shall thereafter be elected in said townships of Canton and Plain."

By the provisions of Section 1579-702, supra, the Municipal Court of Canton, upon the expiration of the term of office of the last justice of the peace in Canton and Plain Townships, was vested with all the jurisdiction and powers theretofore vested in justices of the peace in said townships and such courts of said justices of the peace and all jurisdictions and powers thereof were thereupon abolished and no justices of the peace or constables were thereafter to be elected in said townships of Canton and Plain.

On April 21, 1927, (112 v. 178) the 87th General Assembly passed an act entitled:

"An Act—To supplement Section 1579-672 of the General Code, by the enactment of supplemental Section 1579-672a, relative to the jurisdiction of justices of the peace or mayors in Stark County, outside of the City of Canton, Ohio."

Which act reads as follows:

"No justice of the peace, or mayor, in any township in Stark County, other than the townships of Plain or Canton, *in any civil proceedings,* in

which any summons, order of attachment, garnishment or replevin, or other process, except supoena for witnesses, shall have been served upon a citizen or resident of the City of Canton or of Plain or Canton Townships, or a corporation or firm having its principal office therein, shall have jurisdiction, unless such service be actually made by personal service within the township or village in which said proceedings may have been instituted." (Italics the writer's.)

You will note that the provisions of Section 1579-672a, supra, by its express terms, apply only "in any civil proceedings" and are not a limitation or restriction upon the jurisdiction of such magistrates in criminal cases.

Your attention is directed to Section 13422, General Code, which provides:

"A justice of the peace shall be a conservator of the peace and have jurisdiction in criminal cases throughout the county in which he is elected and where he resides, on view or on sworn complaint, to cause a person, charged with the commission of a felony or misdemeanor, to be arrested and brought before himself or another justice of the peace, and, if such person is brought before him, to inquire into the complaint and either discharge or recognize him to be and appear before the proper court at the time named in such recognizance, or otherwise dispose of the complaint as provided by law. He also may hear complaints of the peace and issue search warrants."

Section 13423, General Code, provides in part as follows:

"Justices of the peace, police judges and mayors of cities and villages shall have jurisdiction, within their respective counties, in all cases of violation of any laws relating to:

* * * * * * * * * * *"

Then follow sixteen classes of offenses in which such magistrates have final jurisdiction.

Your attention is directed to the case of *Steele* vs. *Karb, Sheriff,* 78 O. S. 376, the syllabus of which reads:

"Under the provisions of Section 610, Revised Statutes, (now Section 13422, General Code,) a justice of the peace has 'jurisdiction in criminal cases throughout the county in which he is elected and where he resides', and his authority to hear and dispose of a criminal case in the manner prescribed by the statute, is not limited to the township for which he is elected and where he resides."

After quoting Section 610, Revised Statutes, which read substantially the same then as now, Chief Justice Price, who wrote the opinion of the court, at page 380, used the following language:

"As to the territorial jurisdiction the above is like that conferred by 'An act defining the powers and duties of justices of the peace and constables in criminal cases,' which passed March 27, 1837, and took effect July 4, 1837. See S. & C Statutes, p. 810. There it is said: 'Every justice of the peace shall have jurisdiction in criminal cases throughout

the county in which he was elected, and where he shall reside. And he shall be a conservator of the peace therein * * .' So it is, that the territorial extent of his jurisdiction has been of long standing in criminal cases, and then as now his warrant may command the ministerial officer to arrest the accused party and bring him before the issuing justice, or some other in the county. Then as now he was a conservator of the peace throughout the county. There is no limitation as to where the examination or trial shall he held. No court house or fixed place of holding court is provided for such officers as a general rule, and if the magistrate has jurisdiction of criminal cases throughout the county, he has jurisdiction of an offense or crime committed in any township in the county 'in which he is elected and where he resides.' And on view or on sworn complaint while in any township, Section 610, supra, makes it the duty of the justice 'to cause every person charged with the commission of a felony or misdemeanor to be arrested and brought before himself or some other justice,' et cetera.

In case such a magistrate, per chance or per purpose, is abroad from his own township, but in the county where 'he is elected and resides,' on view of the commission of a crime, he may cause the arrest of the perpetrator on such view, or on sworn complaint, and that he be brought before himself or some other justice of the peace. Must the magistrate return to the confines of his own township in order to try the accused party? The crime was committed in the county but outside of the township where the magistrate resides and where he was elected. Clearly he has jurisdiction over the crime or offense, because it was committed in his county, and it is equally clear that he can cause the arrest while outside of his own township, but within the county. Having jurisdiction of the offense throughout the county and the right to cause the arrest in the township where the same was committed, it seems reasonable that the trial, if one is had, or the plea of guilty taken, if such plea is offered, may be had or taken in the same township, and that having taken jurisdiction of both the offense and the offender, the justice may there determine the case. Unless the statute requires it, it would be in the discretion of the justice to try the accused in the township where the offense was committed and the arrest made, or to return to an open court in his own township. The statute does not forbid him holding the trial outside of his own township. Having jurisdiction of crimes throughout the county, he may hear and determine as to them in any township in the county."

See also the case of *Stiess* vs. *The State of Ohio,* 103 O. S. 33, the third paragraph of the syllabus of which reads as follows:

"3. The jurisdiction of a police justice is coextensive with the county in which the village is located, and such justice may hold court any place in the county, even outside of the limits of the village where he is appointed and holds his office, although such place of holding court may be within the limits of another incorporated city or village within such county."

Chief Justice Marshall, who wrote the opinion of the court, used the following language on page 44:

"No provision is made by statute that police justices may only hold court within the limits of the township for which they were appointed, but on the contrary it is provided that they may have jurisdiction in misdemeanor prosecutions co-extensive with the county in which the village is located. The legislature having placed a limitation upon the location where a justice of the peace may hold court in civil cases, it will be presumed that the legislative intent on this subject was exhausted and that it was not intended to place a like limitation in criminal cases. This rule was followed in the case of *Steele* vs. *Karb, Sheriff,* 78 O. S. 376. In that case it was held that a justice of the peace has authority to hear and dispose of a criminal case outside of the township for which he is elected and in which he resides, in those cases where his jurisdiction is co-extensive with the county, and no possible reason is perceived why a different rule should be made for a police justice who also had jurisdiction co-extensive with the county. The case of *Steele* vs. *Karb, Sheriff,* will therefore be followed."

Summarizing and answering your questions specifically, it is my opinion that:

1. Any justice of the peace duly elected in any township of Stark County, Ohio, has jurisdiction in criminal cases throughout the county in which he is elected and where he resides, and his authority to hear and determine a criminal case in the manner prescribed by law, is not limited to the township for which he is elected and where he resides.

2. An affidavit in a criminal case may be made and filed before any justice of the peace duly elected in any township of Stark County, Ohio, in any township in such county and such justice may issue a warrant in such township, regardless of whether or not it be the township in which such justice of the peace was elected and where he resides.

This opinion is confined to the specific questions submitted with reference to Stark County. The various municipal court acts of the state differs in their terms, and each particular act must be examined before attempting to apply the conclusions reached in an opinion relating to the municipal court of one city to that of another.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1666.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN MAHONING COUNTY.

COLUMBUS, OHIO, February 3, 1928.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*