

OPINION NO. 69-117

Syllabus:

A mayor of a village presiding over a mavor's court may sentence a person to imprisonment for violation of a village ordinance if such person in writing waives a jury and consents to be tried by the mayor as magistrate.

To: Richard B. McQuade, Fulton County Pros. Atty., Wauseon, Ohio  
By: Paul W. Brown, Attorney General, September 19, 1969

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

"May a mayor of a village presiding over a Mayor's Court sentence a person to imprisonment for a violation of a village ordinance?"

The answer to your question involves the consideration of Sections 1905.01, 2938.04, 2937.08, 2931.01 and 2945.07 of the Revised Code. The jurisdiction of a mayor's court is provided in Section 1905.01, Revised Code, 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 [1901.02.1] of the Revised Code or by designation of the judges pursuant to section 1901.021 [1901.02.1] 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.

"\* \* \* \* \*"

Section 2938.04, Revised Code, provides in pertinent part as follows:

"\* \* \* In courts not of record jury trial may not be had, but failure to waive jury in writing where right to jury trial may be asserted shall require the magistrate to certify such case to a court of record as provided in section 2937.08 of the Revised Code."

Section 2937.08, Revised Code, provides in pertinent part as follows:

"\* \* \* \* \*"

Upon the entry of such pleas [not guilty or once in jeopardy] to a charge of misdemeanor in a

court not of record the magistrate shall forthwith set the matter for future trial or, with the consent of both state and defendant may set trial forthwith, both pursuant to Chapter 2938. of the Revised Code, provided that if the nature of the offense is such that right to jury trial exists, such matter shall not be tried before him unless the accused, by writing subscribed by him, waives a jury and consents to be tried by the magistrate.

"If the defendant in such event does not waive right to jury trial, then the magistrate shall require the accused to enter into recognizance to appear before court of record in the county, set by such magistrate, and the magistrate shall thereupon certify all papers filed, together with transcript of proceedings and accrued costs to date, and such recognizance if given, to such designated court of record. \* \* \*"

Section 2931.01, Revised Code, defines a magistrate as including mayors of municipal corporations.

Section 2945.07, Revised Code, provides for the right of trial by jury:

"At any trial in any court for the violation of any statute of this state or of any ordinance of any municipal corporation, except in cases in which the penalty involved does not exceed a fine of \$50.00, the accused has the right to be tried by jury."

A mayor's court is not a court of record. Opinion No. 21, Opinions of the Attorney General for 1965; Opinion No. 1208, Opinions of the Attorney General for 1960. Thus a jury trial may not be had therein. In any prosecution for the violation of a municipal ordinance in which the penalty involved is imprisonment, the accused has the right to be tried by jury. Under the provisions of Sections 2937.08 and 2938.04, supra, the mayor must certify such a case to a court of record unless the accused, by writing, subscribed by him, waives a jury and consents to be tried by the mayor as a magistrate. If the accused does waive in writing his right to a jury trial, the mayor may proceed as in any other case wherein he has jurisdiction. The mayor, in such a case, has authority to impose the penalty prescribed for violation of the ordinance even if the penalty involves imprisonment.

It is, therefore, my opinion and you are hereby advised that a mayor of a village presiding over a mayor's court may sentence a person to imprisonment for violation of a village ordinance if such person in writing waives a jury and consents to be tried by the mayor as magistrate.