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MUNICIPAL CORPORATION—WHERE COUNCIL ADOPTED ORDINANCE TO SUMMON AND IMPANEL JURORS FOR CRIMINAL TRIALS IN MAYOR'S COURT— JURORS SHOULD BE SUMMONED PURSUANT TO PROVISIONS OF ORDINANCE—SECTION 4552, G. C.—SECTIONS 13424-1, 13424-2, 13424-3, G. C. SHOULD NOT BE INVOKED.

SYLLABUS:

Where, under the provisions of Section 4552, General Code, a council of a municipal corporation adopts an ordinance providing for summoning and impaneling jurors for criminal trials in the mayor's court of such corporation, such jurors should be summoned pursuant to the provisions of such ordinance rather than the provisions of Sections 13424-1, 13424-2 and 13424-3, General Code.

Columbus, Ohio, July 31, 1943.

Hon. Ray Bradford, Prosecuting Attorney,
Batavia, Ohio.

Dear Sir:

You have requested my opinion as follows:

“Section 4552 of the General Code provides that council of any municipal corporation may provide by ordinance for sum-

moning and impaneling juries, and that the jurors so summoned may be impaneled to try any case which by the Constitution is triable by jury.

Sections 13424-1 to 13424-3 provide a statutory method of jury selection in prosecutions before a magistrate when imprisonment is a part of the punishment.

Question: May a jury summoned and impanelled in accordance with the provisions of a municipal ordinance, but not in the manner provided by sections 13424-1 to 13424-3, hear an offense punishable by imprisonment?"

Sections 4552, 13424-1, 13424-2 and 13424-3, General Code, to which you refer in your letter, respectively provide:

Section 4552:

"The council of any municipality may prescribe by ordinance for summoning and impaneling juries under this division, and the jurors so summoned shall have the qualifications of jurors in the court of common pleas, and may be impaneled to try any case which, by the constitution, or the provisions of this division, is triable by jury."

Section 13424-1:

"In prosecutions before a magistrate, when imprisonment is a part of the punishment, if a trial by jury is demanded, the magistrate, not less than three days nor more than five days before the time fixed for trial, shall certify to the clerk of the court of common pleas of the county that such prosecution is pending before him. Failure to demand a jury as in this section provided, shall be deemed a waiver of the same."

Section 13424-2:

"Thereupon the clerk shall draw from the jury wheel containing the names of persons selected to serve as petit jurors in the court of common pleas in such county, twenty names which shall be drawn and counted in a like manner as for jurors in the court of common pleas. The clerk shall forthwith certify the names so drawn to the magistrate, who, thereupon shall issue to any constable, chief of police or marshal in the county, a venire containing the names of the persons to serve as jurors in the case and make due return thereof."

Section 13424-3:

“The jurors shall be subject to like challenges as jurors in criminal cases, except capital cases, in the court of common pleas. If the venire is exhausted without obtaining the number required to fill the panel, the magistrate shall fill the panel with talesmen in the manner provided for criminal cases in the court of common pleas.”

The three sections last quoted are similar to former Sections 13432, 13433 and 13434, General Code. These three former sections were first enacted by an act found in 81 O. L., 181, and were last amended by an act found in 95 O. L., 517. Section 4552, General Code, was enacted by an act found in 66 O. L., 180, and it has never been amended. It might therefore be very plausibly claimed that Section 4552, General Code, was impliedly repealed by the enactment of former Sections 13432, 13433 and 13434, General Code, since they were later in point of time.

Nevertheless, I believe that such claim would be unfounded for at least two reasons. Section 4552, General Code, is a special statute dealing with the selection of juries for trials in the courts of mayors of municipal corporations, whereas, former Sections 13432, 13433 and 13434, General Code, had to do with juries in the courts of magistrates generally.

In 37 O. Jur., 617, Section 341, it is said:

“It may be presumed to have been the intention of the Legislature that all its enactments, which are not repealed, should be given effect. Accordingly, all statutory provisions should be so construed, if possible, as to give full force and effect to each and all of them, and not to abrogate, defeat or nullify one by the interpretation of another, where that can be done by a reasonable construction of both. Accordingly, a construction should be avoided, which would render a part of the statutory law inoperative, meaningless, nugatory, purposeless, unnecessary, or useless, unless such a construction is manifestly required.”

Moreover, Section 4554, General Code, the prototype of which was enacted by the same act as Section 4552, General Code, provides:

“Jurors so summoned shall perform like duties, and be subject to like rules and penalties, as jurors before justices of the peace. In civil cases jurors shall receive the same compensation as is provided for jurors before justices of the peace in civil cases; and in ordinance and state cases the same compensation as is provided for jurors before justices of the peace in criminal cases; in ordinance cases payment shall be made from the municipal treasury and in state cases from the county treasury upon the certificate of the court.”

This section was last amended by an act found in 109 O. L., 173, which was enacted several years after the last amendment to former Sections 13432, 13433 and 13434, General Code. The General Assembly therefore must not have regarded Section 4552, General Code, as repealed or superseded by former Sections 13432, 13433 and 13434, General Code, or it would not have amended Section 4554, General Code, for this section has application only to jurors summoned pursuant to an ordinance adopted under authority of Section 4552, General Code. Since Sections 13424-1, 13424-2 and 13424-3, General Code, are but recodifications of former Sections 13432, 13433 and 13434, General Code, I do not believe that they restrict or limit the operation of Section 4552, General Code.

I am therefore of the opinion that where, under the provisions of Section 4552, General Code, a council of a municipal corporation adopts an ordinance providing for summoning and impaneling jurors for criminal trials in the mayor's court of such corporation, such jurors should be summoned pursuant to the provisions of such ordinance rather than the provisions of Sections 13424-1, 13424-2 and 13424-3, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.