

1208

MAYOR OF A VILLAGE HAS JURISDICTION TO HEAR AND DETERMINE ALL PROSECUTIONS FOR VIOLATIONS OF ORDINANCES, WHEN—§§1905.09, 1905.11, 2945.17, 2938.04, 1907.031, 1901.04, R.C.

SYLLABUS:

1. Pursuant to Sections 1905.09, 1905.11, and 2945.17, Revised Code, a mayor of a village has jurisdiction to hear and determine all prosecutions for violations of ordinances where the defendants are not entitled to a trial by jury; and such mayor has jurisdiction to hear and determine prosecutions for violations of ordinances where the defendants are entitled to trial by jury if, before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case.

2. A mayor's court of a village is not a court of record and under the provisions of Section 2938.04, Revised Code, in a prosecution in such court for violation of an ordinance where the accused is entitled to a trial by jury and does not waive such right, the mayor is required to certify the case to a court of record.

3. In a prosecution in a mayor's court of a village for violation of an ordinance where the accused is entitled to trial by jury but waives such right in writing, the mayor may proceed as in any other case in which he has jurisdiction. In this regard, the mayor, as a magistrate, must follow the procedure specified in Chapter 2938., Revised Code.

4. Under Sections 1905.09, 1905.11, 1907.031, and 1901.04, Revised Code, the jurisdiction in criminal cases of a village mayor's court located in a municipal court territory is the same as that of a village mayor's court located in a county court district, except that a mayor of a village in which a municipal court is located has no civil or criminal jurisdiction.

Columbus, Ohio, March 24, 1960

Hon. Richard L. Davis, Prosecuting Attorney  
Highland County, Hillsboro, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"What jurisdiction does a Mayor of a Village have to hear and determine a criminal case involving a violation of a village ordinance which provides imprisonment as a part of the punishment?"

"What jurisdiction does such a mayor have if a waiver of jury trial is signed by the accused?"

"Are the answers to the above questions the same for a village located in a Municipal Court District and a village located in a County Court District?"

The jurisdiction of a mayor's court of a village is provided by Section 1905.09, Revised Code, reading as follows:

"In villages not having a police court and not being the site of a municipal court, the mayor has final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the municipal corporation, unless imprisonment is prescribed as part of the punishment. In keeping his dockets and files, the mayor shall be governed by the laws pertaining to county courts."

Referring to said Section 1905.09, Section 1905.11, Revised Code, reads as follows:

"The mayor of a village has jurisdiction to hear and determine cases as provided in section 1905.09 of the Revised Code, if before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case."

Thus, under Section 1905.09, *supra*, a village mayor may hear and determine any prosecution for the violation of an ordinance of the municipal corporation, unless imprisonment is prescribed as part of the punishment. The question then arises as to whether the provisions of Section 1905.11, *supra*, apply to all ordinance prosecutions or just to those for which imprisonment is prescribed as part of the punishment.

On studying the provisions in question, I am of the opinion that in enacting Sections 1905.09 and 1905.11, *supra*, the intention was to give the mayor jurisdiction to hear and determine all ordinance cases, except that where the defendant is entitled to trial by jury the mayor has such jurisdiction only if, before the commencement of the trial, the accused waives jury trial.

Regarding the right to trial by jury, Section 5 of Article I, Ohio Constitution provides:

“The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.” Further, Section 2945.17, Revised Code, provides:

“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 fifty dollars, the accused has the right to be tried by a

Thus, the provision of Section 1905.11, *supra*, relative to waiver recognizes the right of a defendant to trial by jury where imprisonment is prescribed as part of the penalty. The next question is whether such waiver of trial by jury extends only to cases wherein imprisonment is part of the penalty, or whether it extends to all cases wherein the defendant would be entitled to a trial by jury. (For example, where the fine is in excess of \$50.00.) As noted, Section 2945.17, *supra*, provides that a defendant is entitled to a jury trial unless the penalty involved does not exceed a fine of fifty dollars. In this regard, it should be noted that in a prosecution for the violation of any ordinance in which the accused is entitled to trial by jury and does not waive such right, the mayor does not have jurisdiction to hear and determine the case. This is true whether imprisonment is part of the penalty, or whether the right to jury trial is based on the provisions of Section 2945.17, *supra*, (Section 2938.04, Revised Code.) Thus, Section 1905.11, *supra*, applies in all cases in which the accused is entitled to a trial by jury.

Ohio courts in the past have had occasion to construe the effect of Section 1905.11, Revised Code, relative to right to jury trial. In the case of *Village of New Miami v. White*, 73 Ohio App. 12, in which the court dealt with what is now Section 1905.09, Revised Code, the second head-note reads :

“2. Under Section 4535 *et seq.*, General Code, it is the duty of a village mayor, where no written waiver of trial by jury is filed with him, by an accused person charged by affidavits with the violation of village ordinances prescribing imprisonment as part of the penalty, to either summon a jury, or function as a magistrate only, pursuant to Section 4539, General Code.”

The Court of Appeals of Greene County, in *State v. Ferguson*, 100 Ohio App. 191, in considering former Sections 1905.10 and 1905.11, Revised Code, made the following comment at page 199 of their decision :

“\* \* \*

“Sections 1905.10 and 1905.11, Revised Code, recognize the constitutional right to trial by jury where imprisonment is part of the penalty.

“In such cases, unlike a statutory right to trial by jury, the accused is entitled to a jury unless it is affirmatively waived. A failure to demand a jury in such cases does not constitute a waiver. The record must affirmatively show that defendant waived a jury. *Hoffman v. State*, 98 Ohio St., 137, 139, 120 N.E. 234; *City of Fremont v. Keating*, 96 Ohio St., 468, 471, 118 N.E. 114; *In re Quatman*, 96 Ohio App. 422, 122 N.E. (2d), 32. In the case at bar a jury was not waived. The mayor testified that the defendant refused to sign a waiver.

“The converse of Section 1905.11, Revised Code, is that if the defendant does not waive trial by jury, the mayor is without jurisdiction to try the case without a jury. The mayor being without jurisdiction, the sentences and commitments were illegal and void. It follows that the confinement of the defendant was illegal and void, and his escape therefrom was not in violation of Section 2901.11, Revised Code.

“\* \* \*”

I might note at this time that Sections 1905.09 and 1905.11, Revised Code, were both amended in the 103rd General Assembly (1959), but that such amendments did not affect the jurisdiction of a mayor in ordinance cases. Thus, although the cases above cited were heard before such amendments, the amendments made have not effect on the decisions of the court.

I conclude, therefore, that under Sections 1905.09 and 1905.11, Revised Code, a mayor of a village has jurisdiction to hear and determine all prosecutions for violations of ordinances where the defendants are not entitled to a trial by jury; and has jurisdiction to hear and determine prosecutions for violations of ordinances where the defendants are entitled to trial by jury if, before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case.

Where the defendant is entitled to trial by jury and does not waive such right, the mayor of the village is required to certify the case to a court of record. In this regard, Section 2938.04, Revised Code, provides:

“\* \* \* 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.”

Further in this regard, it will be noted that former Section 1905.12, Revised Code, which authorized the mayor of a village to summon a jury, and try the accused, in a prosecution for the violation of an ordinance in which the accused was entitled to trial by jury but did not waive the jury, was expressly repealed by the 103rd General Assembly in the same act which created Section 2938.04, *supra*, (Amended Substitute Senate Bill No. 73, effective January 1, 1960.) Thus, it is clear that the mayor of a village has no jurisdiction to summon a jury and try an accused in a prosecution for the violation of an ordinance in which prosecution the accused is entitled to a trial by jury.

Specifically answering your second question, if the mayor receives a formal written waiver of the right to trial by jury, he may proceed as in any other case where he has jurisdiction. In this regard, the procedure for magistrates' courts as provided in Chapter 2938., Revised Code, must be followed, as a mayor of a village is a magistrate within the purview of that Chapter, (See Sections 2938.01 and 2931.01, Revised Code.) Section 2938.11, Revised Code, specifically sets out the order of the proceedings; Section 2938.13, Revised Code, provides the responsibility for prosecution; and Section 2938.15, Revised Code, sets forth the rules in regard to procedure.

Therefore in answer to your second question, it is my opinion that the jurisdiction conferred by Section 1905.11, Revised Code, is complete and

the mayor may proceed to try such case pursuant to the procedure set forth in Chapter 2938., Revised Code.

Your third question is clearly answered by Sections 1901.04 and 1907.031, Revised Code.

Section 1901.04, Revised Code, reads in part :

“Upon the institution of a municipal court, the jurisdiction of the mayor and the police justice in all civil and criminal causes terminated within the municipal corporation in which such municipal court is located. All other mayors within the territory may retain such jurisdiction as is now provided in all criminal causes involving violations of ordinances of their respective municipal corporations and in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations, to be exercised concurrently with the municipal court.

“\*\*\*”

Section 1907.031, Revised Code, reads in part :

“As of the effective date of this section, the jurisdiction of mayors to hear and determine prosecutions for felonies or misdemeanors terminates within the county court district. Thereafter, mayors within the district may retain such jurisdiction as is now provided in all criminal causes involving violation of ordinances of their respective municipal corporations and in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations, to be exercised concurrently with the county court.

“\* \* ,\*”

Also, the jurisdiction provided by Sections 1905.09 and 1905.11, supra, is not limited to any certain areas but pertains to any area in which the mayor is located.

Therefore, in answer to your third question, it appears that the legislature has clearly granted jurisdiction to village mayors to try ordinance cases as noted herein whether they are located in municipal court jurisdiction or in county court jurisdiction.

Accordingly, it is my opinion and you are advised :

1. Pursuant to Sections 1905.09, 1905.11, and 2945.17, Revised Code, a mayor of a village has jurisdiction to hear and determine all

prosecutions for violations of ordinances where the defendants are not entitled to a trial by jury; and such mayor has jurisdiction to hear and determine prosecutions for violations of ordinances where the defendants are entitled to trial by jury if, before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case.

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Respectfully,

MARK McELROY

Attorney General