6246

MAYOR OF VILLAGE—MISDEMEANOR CASE—MAY ASSUME FINAL JURISDICTION AND PRONOUNCE SENTENCE UPON PLEA OF GUILTY, EVEN THOUGH COMPLAINT NOT MADE BY PARTY INJURED—CASE WHERE ACCUSED NOT ENTITLED TO JURY TRIAL BY CONSTITUTION OF OHIO.

SYLLABUS:

A mayor of a village may assume final jurisdiction and pronounce sentence upon a plea of guilty in case of a misdemeanor where the accused is not entitled by the Constitution of Ohio to a trial by jury, even though the complaint is not made by the party injured.

Columbus, Ohio, July 31, 1943.

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

Dear Sir:

You have requested my opinion as follows:

"Section 13433-9 of the General Code requires a magistrate to recognize an accused who pleads guilty to a misdemeanor where the complaint is not made by the party injured.

In State vs. Borham, 72 O. S., 358, and again in State ex rel. Conners vs. DeMuth, 96 O. S. 519 the Supreme Court decided that the mayor of a city not having a police court is not a magistrate within the meaning of the above section and that such mayor has jurisdiction to pronounce sentence upon a plea of guilty although the party injured is not the complainant, by force of sections 4527 to 4530 of the General Code.

Except for the fact that they refer to mayors of villages, sections 4535, 4536, and 4537 are identical with sections 4527, 4528, and 4530.

Questions: (1) May the mayor of a village assume final jurisdiction and pronounce sentence upon a plea of guilty where the complainant is not the party injured? (2) What if any effect has the adoption of section 13422-1 of the General Code which defines the word 'magistrate' as including mayor had upon the supreme court decisions cited above?"

Sections 4535, 4536 and 4537, General Code, to which you refer in your letter, respectively provide:

Section 4535:

"In villages, the mayor shall have final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation unless imprisonment is prescribed as part of the punishment, and in keeping his dockets and files, he shall be governed by the laws pertaining to justices of the peace."

Section 4536:

"He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor unless the accused is, by the constitution, entitled to a trial by jury. His jurisdiction in such cases shall be co-extensive with the county, and in keeping his

dockets and files, making report to the county auditor, disposing of unclaimed monies, and in purchasing his criminal docket and blanks for state cases, shall be governed by the laws pertaining to justices of the peace."

Section 4537:

"He shall have the jurisdiction in the cases mentioned in the last two sections, notwithstanding the right to a jury, if before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case."

In addition to these sections, your attention is directed to the provisions of Sections 4538 and 4540, General Code, which are respectively as follows:

Section 4538:

"He may summon a jury, and try the accused, in any prosecution for the violation of an ordinance, where imprisonment is a part of the prescribed punishment, and the accused does not waive a jury, and in such case, judgment shall be rendered in accordance with the verdict, unless a new trial, for sufficient cause, is granted."

Section 4540:

"In misdemeanors prosecuted in the name of the state he may summon a jury and try the case notwithstanding the accused has a right to a jury which he has not waived, if a request for such trial subscribed by the accused is filed in the case, before the commencement of the trial. In such case the trial shall be had on the affidavit in the same manner and with like effect as a trial is had on indictment for such offense in the court of common pleas."

As stated by you in your letter, Sections 4535, 4536 and 4537, General Code, are almost identical with Sections 4527, 4528 and 4530, General Code. Section 4528, General Code, is substantially the same as former Section 1817, Revised Statutes. Sections 13433-9 and 13433-10, General Code, which are substantially similar to former Sections 7146 and 7147, Revised Statutes, respectively, provide:

Section 13433-9.

"When a person charged with a misdemeanor is brought before a magistrate on complaint of the party injured, and pleads guilty thereto, such magistrate shall sentence him to such pun-

ishment as he may deem proper according to law, and order the payment of costs. If the complaint is not made by the party injured and the accused pleads guilty, the magistrate shall require the accused to enter into a recognizance to appear before the proper court as provided when there is no plea of guilty."

Section 13433-10.

"When the accused is brought before the magistrate and there is no plea of guilty, he shall inquire into the complaint in the presence of such accused. If it appear that an offense has been committed, and there is probable cause to believe the accused guilty, he shall order him to enter into a recognizance with good and sufficient surety, in such amount as he deems reasonable, for his appearance at a proper time and before the proper court, otherwise, he shall discharge him from custody. If the offense charged is a misdemeanor, and the accused in a writing subscribed by him and filed before or during the examination, waive a jury and submit to be tried by the magistrate, he may render final judgment."

In the case of State v. Borham, 72 O. S., 358, the court held as disclosed by the syllabus:

"By force of Section 1817, Revised Statutes, a mayor of a city in which there is no police court, has final jurisdiction to hear and determine any prosecution for a misdemeanor where the accused is not entitled to a trial by jury, and it is not the mayor's duty, in such case, to require the accused to enter into recognizance to appear in a higher court, although the complaint is not by the party injured."

The case was approved and followed and a similar conclusion reached in State, ex rel. Conners, v. DeMuth, 96 O. S., 519. At page 361 in the opinion of the court in the Borham case, it was said:

"The mayor acted, in thus taking final jurisdiction and imposing sentence, upon the authority granted by Section 1817, Revised Statutes, which provides that the mayor 'shall have final jurisdiction to hear and determine any prosecution for a misdemeanor unless the accused is, by the constitution, entitled to a trial by jury.'

But it is contended by counsel for the accused, and doubtless this was the view taken by the learned circuit court, that the section above quoted is controlled in this respect, if not wholly superseded, by other sections of the statute. The section specially referred to is 7146, and it is insisted that if Section 1817 is construed as giving mayors jurisdiction in prosecutions for misdemeanors to render final judgment where there is a plea of

> guilty and the complaint is not by the party injured, it renders nugatory as to one class of magistrates the provisions of Section 7146 as amended many years after the passage of Section 1817. It is further insisted that where there are contradictory provisions, and both are susceptible of a reasonable construction which will not render nugatory any part of either, it is the duty of the court to give such construction. Section 7146 does provide that where one accused of a misdemeanor is brought before a magistrate on the complaint of one other than the person injured, and pleads guilty, the magistrate shall require him to enter into a recognizance to appear at the proper court. It is also true that, in the broad sense, a mayor is a magistrate, so that there is conflict in the text of the two sections."

Further in the opinion at page 363, the court used the following language:

> "We are constrained to the conclusion that Section 1817 was intended by the General Assembly as an exception to the general provisions of 7146. Had the intent been otherwise, it would have been entirely easy, by the use of a half dozen words, to make that purpose plain. No such words are used. This conclusion is strengthened rather than weakened by the fact that, after the enactment of Section 1817, the general subject was further considered as is shown by the amendment to Section 7146, to which counsel for defendant call attention; and the fact that no change was then made in Section 1817 indicates that none was desired. It is the duty of the courts to enforce plain statutes as they find them. Slingluff v. Weaver, 66 Ohio St., 621. By these plain terms final jurisdiction is given the mayor, provided only that the offense charged is a misdemeanor and that the accused is not entitled to a trial by jury."

While the decision in the case of State v. Borham concerned the jurisdiction of a mayor of a city, the principles laid down in that case are equally applicable to village mayors because of the similarity above noted to the provisions of the General Code establishing the respective jurisdictions of city mayors and village mayors.

You also refer to Section 13422-1, General Code, which provides in part:

> "For the purposes of this title, the word 'magistrate' shall be held to include justices of the peace, police judges or justices, mayors of municipal corporations and judges of other courts inferior to the court of common pleas."

This section was enacted in 1929 as a part of the Code of Criminal Procedure and is contained in the same title in which are found Sections 13433-9 and 13433-10, General Code. It is therefore necessary to deter-

mine whether the Legislature by the enactment of Section 13422-1, General Code, impliedly repealed the provisions of Section 4535, et seq., General Code, relating to the criminal jurisdiction of village mayors. 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."

Further in the same work at page 622, Section 342, I find the following statement:

> "Accordingly, the rule is that all laws newly enacted by the General Assembly must be presumed to harmonize with existing statutes on kindred subjects neither expressly nor impliedly repealed."

In my Opinion No. 2244, found at page 450 of Volume I of the Opinions of the Attorney General for 1940, I said at page 457:

> "In 37 O. J. at page 622, it is said:
>
> '* * * the rule is that all laws newly enacted by the General Assembly must be presumed to harmonize with existing statutes on kindred subjects neither expressly nor impliedly repealed.'
>
> It must also be remembered that Section 13422-1, supra, so far as a mayor is concerned, is merely a specific statement of a fact that has always been recognized. In the State vs. Borham case, supra, which was decided prior to the enactment of Section 13422-1, General Code, the court said that:
>
> 'It is also true that, in a broad sense, a mayor is a magistrate.'
>
> Sections 13433-9 and 13433-10, General Code, concern all magistrates generally. However, Sections 4527, et seq. and 4535, et seq., apply only to one class of magistrates, viz., mayors. In the case of State, ex rel. vs. Connar, 123 O. S., 310, the court ruled as disclosed by the syllabus:

> 'Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions.'
>
> In view of the above, I am constrained to the view that Sections 4527, et seq. and 4535, et seq., General Code, define the criminal jurisdiction of mayors and that Sections 13433-9 and 13433-10, General Code, are inapplicable in so far as they might be construed to conflict therewith."

Your attention is also directed to my Opinion No. 1076, found at page 1547 of Volume II of the Opinions of the Attorney General for 1939, where a similar question to that propounded by you was involved.

In view of the foregoing, I am of the opinion that the enactment of Section 13422-1, General Code, has had no effect upon the conclusions reached in State v. Borham, 72 O. S., 358, and State, ex rel. Conners, v. DeMuth, 96 O. S., 519. You are therefore advised, in specific answer to your question, that a mayor of a village may assume final jurisdiction and pronounce sentence upon a plea of guilty in case of a misdemeanor where the accused is not entitled by the Constitution of Ohio to a trial by jury, even though the complaint is not made by the party injured.

Respectfully,

THOMAS J. HERBERT,
Attorney General.