

"In 1926 at the December session of our county commissioners sheep claims amounting to \$5,937.25 were paid pro rata. The amounts paid to the claimants were a little over forty-three per cent of the claims as allowed. This year, after paying claims as allowed amounting to \$1,900.00, there will remain in the dog and kennel fund about \$400.00 as a surplus. The total amount collected from the registration of dogs and dog kennels was \$3,300.00. Claimants whose claims were allowed in 1926 and paid pro rata are making claim, under Section 5846 of the General Code as it read prior to its amendment by the last legislature, to this surplus. Our county auditor desires a ruling from your department as to the proper disposition of said surplus fund."

The question that you present was considered in a recent opinion of this department, being Opinion No, 1351, dated December 12, 1927, Opinions, Attorney General for 1927, the first paragraph of the syllabus of which reads:

"1. By the provisions of House Bill No. 164, (112 v. 347), a board of county commissioners is authorized to expend a surplus remaining in the dog and kennel fund at the close of the year 1927 for the payment of claims heretofore allowed but unpaid regardless of the year in which such claims were allowed. Such claims should be paid in full in the order in which they have been allowed in so far as such surplus permits."

The above opinion, a copy of which I am herein enclosing, is determinative of the question which you present.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1356.

JURISDICTION—PROSECUTION UNDER SECTIONS 5652-14 TO 5652-15,
GENERAL CODE, IN COUNTIES HAVING NO MUNICIPAL COURT.

SYLLABUS:

In counties of this state which have no Municipal Court, prosecutions charging a violation of Sections 5652-14, 5652-14a, 5652-14b and 5652-15, General Code, should be instituted in the Probate Court upon information and affidavit. The grand jury of such county also may consider such offenses subject, of course, to the provisions of Section 13572, General Code.

COLUMBUS, OHIO, December 14, 1927.

HON. HOWARD J. SEYMOUR, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter which reads as follows:

"Would like your opinion on construction of Section 5652-14 of the General Code relating to the new dog laws as to whether a justice of the peace has jurisdiction to hear and decide cases brought under this section. The old section beginning with the penal clause, reads:

'Shall be fined not more than \$25.00 and the costs of prosecution. The fine recovered shall be paid by the justice of the peace, mayor, or judge of the

municipal court, to the county auditor, who shall immediately pay the same into the county treasury to the credit of the Dog and Kennel Fund.'

The amended section reads:

'Shall be fined not less than \$5.00 nor more than \$25.00 and the costs of prosecution.'

then omits any reference to the justice of the peace, mayor, or judge of the municipal court, and continues:

'Whoever obstructs or interferes with anyone lawfully engaged in capturing an unlicensed dog, or making an examination of a dog wearing a tag, etc.'

Section 5652-7 reads in part:

'Whenever any person shall file an affidavit in a court of competent jurisdiction, that there is a dog, more than three months of age, running at large, etc.'

None of the above statutes seem to confer jurisdiction on a justice of the peace and Sections 13422 to 13423-1 inclusive, setting out criminal jurisdiction of the justice of the peace, also omit reference to dog cases. Under these circumstances we would like to know your opinion as to which is the court of competent jurisdiction to handle offenses arising under the above mentioned sections."

House Bill No. 164, (112 v. 347), which became effective August 10, 1927, is silent with regard to what courts shall have jurisdiction of the offenses denounced in Sections 5652-14, 5652-14a, 5652-14b and 5652-15, General Code. I agree with your statement to the effect that no section of the General Code confers final jurisdiction upon justices of the peace in this class of offenses.

I have withheld answering your inquiry for the reason that there has been submitted to the Supreme Court of Ohio the question of the status of justices of the peace in misdemeanor cases, and for that reason I do not choose to discuss the competency of such magistrates to hear and determine this class of offenses.

In answer to your inquiry as to which is the proper court in which to bring such actions your attention is directed to Section 13424, General Code, which provides:

"The probate court shall have concurrent jurisdiction with the court of common pleas in all misdemeanors and all proceedings to prevent crime."

Inasmuch as Portage County, Ohio, does not have a municipal court, it is my opinion that in the class of offenses to which you refer prosecutions should be instituted upon information and affidavit filed in the probate court of Portage County, Ohio. Such matters also could be handled by the grand jury of Portage County, Ohio, subject, of course, to the provisions of Section 13572, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.