

"The record offered is not competent under the general rule that in a criminal proceeding the record of a civil action cannot be introduced to establish the facts on which it was rendered. The judgments offered followed verdicts which might have been lawfully returned upon a mere preponderance of evidence. A higher degree of evidence was required to convict under the indictment and the information."

Nor need an indictment under Section 13008, *supra*, allege that in a previous proceeding under the bastardy act the defendant had been or had not been adjudged to be the reputed father of such child. See the case of *Ogg vs. State*, 73 O. S. 59, the syllabus of which reads:

"An indictment under Section 3140-2, Revised Statutes, for failure to provide for an illegitimate child under sixteen years of age need not allege that in a previous proceeding under the bastardy act the defendant had been adjudged to be the reputed father of such child, nor is evidence of such former adjudication necessary to a valid conviction."

Although this case refers to an earlier form of Section 13008, *supra*, the same rule is applicable to such section in its present form.

It must be remembered that upon the trial of an indictment charging a violation of section 13008, *supra*, the paternity of the child in question is an essential element of the crime therein denounced and must be established beyond a reasonable doubt in order to authorize a verdict of guilty. The defendant can interpose, among other defenses, that he is *not* the father of the child. The burden is upon the prosecution to introduce evidence that will prove beyond a reasonable doubt that the defendant is the father of the child in question, the same as it must prove all other material elements of the offense charged in any criminal prosecution.

Summarizing and answering your question specifically, it is my opinion that a prosecution may be maintained under section 13008, General Code, for non-support of an illegitimate child without it first being adjudged that accused is the father of such child. Paternity is a material element of the crime denounced in said section and in order to authorize a verdict of guilty, it must be proved beyond a reasonable doubt that accused *is* the father of such child. The defendant as one of his defenses may show that he is not the father as alleged in the indictment.

Respectfully,

EDWARD C. TURNER,
Attorney General.

554.

MUNICIPAL COUNCIL—AUTHORITY TO PROTECT WATER SUPPLY
WHEN SOURCE OF SUCH SUPPLY IS LOCATED OUTSIDE OF COR-
PORATE LIMITS OF MUNICIPALITY.

SYLLABUS:

1. *Where the water supply of a municipality is obtained from wells, the water works plant being located outside the territorial limits of such municipality, the council of such municipality cannot under the provisions of section 3619, General Code, by ordinance, protect such water supply from possible contamination resulting from the use of adjacent property by the owners thereof.*

2. *Such municipality may in order to insure the purity of its water supply proceed to appropriate under sections 3677, et seq., General Code, so much of such adjacent property as it deems necessary to prevent pollution of its water supply.*

COLUMBUS, OHIO, June 2, 1927.

HON. JOHN E. MONGER, M. D., *Director of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for opinion which reads as follows:

“At the request of the superintendent of water works of the city of Xenia, the Department of Health has recently made an investigation to determine the possibility of contamination of the Xenia public water supply by the location of a number of summer cottages being constructed or proposed in the immediate vicinity of the water supply wells. The Xenia water works plant is located near Massie Creek at its crossing by the Springfield pike some three or four miles from the north corporation line of the city of Xenia. The water supply is secured from wells.

We shall be glad to know if the council of the city of Xenia acting under the provisions of section 3619 of the General Code has the authority, by ordinance, to protect its source of water supply by prescribing the method of construction of privy vaults, cesspools or other means of disposing of household wastes within a radius of five hundred feet of any of the public water supply wells. In other words, can an ordinance of the city of Xenia be made effective for the purpose of protecting its water supply located outside of the city limits?

The attached sheet will assist in explaining the location of the water supply with regard to the city and the location of the property that is being developed for cottages.”

Two maps are submitted with your request, the one showing the location of the water works property with reference to the city of Xenia, the other being a detail map of the water works property. The latter map indicates that the land, on which the summer cottages referred to in your request are to be constructed, is about two hundred feet from the well nearest to it.

Section 3619, General Code, empowers municipalities:

“To provide for a supply of water, by the construction of wells, pumps, cisterns, aqueducts, water pipes, reservoirs, and water works, for the protection thereof, and to prevent unnecessary waste of water and the pollution thereof. * * *”

The provisions of the above section granting a municipality the power to provide for the water supply and for the protection thereof are rather broad and would seem to give to a municipality the power to enact all necessary legislation and to exercise all necessary police power to protect its water supply from pollution without regard as to whether the source of the water supply is located within the limits of the municipality or not. However, section 3, article XVIII of the Ohio Constitution provides:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.”

Under the above provisions of the Ohio Constitution it is clear that the power of municipalities to adopt and enforce police and sanitary regulations is limited to

such as may apply to conditions existing within the territorial limits of the municipality.

Section 12784, General Code, provides a penalty for the pollution of a running stream, the water of which is used for domestic purposes by a municipality, and provides that the jurisdiction of a municipality to prevent the pollution of its water supply and to provide penalty therefor, shall extend twenty miles beyond the corporation limits. However, by its terms the provisions of this section are limited to running streams and do not cover a water supply secured from wells.

If the waterworks property were located within the territorial limits of the city of Xenia, I would have no difficulty in determining that the council of said city could by ordinance protect its source of water supply by prescribing the method of construction of privy vaults, cesspools or other means of disposing of household wastes within a radius of five hundred feet of any of the wells from which such waste supply was taken. However, as the water works property is located outside the territorial limits of the city, it is my opinion that the provisions of section 3, article XVIII of the Ohio Constitution, supra, are applicable and such ordinances of the city would be without force and effect.

While in my opinion the city of Xenia is without power by ordinance to protect its water supply from possible contamination resulting from the construction of summer cottages on land contiguous to the city's water works property, it is suggested that if the city is unable to purchase the necessary property, it may proceed under sections 3677, et seq., General Code, to appropriate a sufficient quantity of the land in question to insure the purity of its water supply. By sub-section 13 of section 3677, General Code, a municipality is empowered to provide for a supply of water for itself and its inhabitants and for the protection thereof, by appropriating property within or without its limits. The procedure to be followed in making such appropriation is outlined in the succeeding sections.

Respectfully,

EDWARD C. TURNER,
Attorney General.

555.

COUNTY COMMISSIONERS—INTERPRETATION OF SECTION 2419,
GENERAL CODE, AND THE PHRASE "OTHER MEANS OF SECURITY
IN THE COUNTY TREASURY".

SYLLABUS:

In the construction of Section 2419, General Code, the words "other means of security in the county treasury" should be construed as meaning means of physical security of like nature to the security provided for by the authorization to furnish room, fireproof and burglar-proof vaults and safes and cannot be extended to mean authorization for the county commissioners to purchase and pay for from county funds burglary or hold-up insurance or insurance against forgery for the protection of the county treasurer.

COLUMBUS, OHIO, June 2, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I have your communication of the 26th instant reading as follows:

"Referring to Opinion No. 527, rendered to this Department under date of May 24th, 1927, in which you reply to our inquiries as to the authority of