2533

COURTS, MAYORS—JURISDICTION—§1905.10 R.C.—Am. H.B. 148, 102nd G.A., 127 O.L. 525, PREVAILS OVER OTHER ENACTMENTS—3146 OAG 1953, p. 526 and 3506 OAG 1954, p. 50, Distinguished.

SYLLABUS:

1. The jurisdiction of a village mayor in misdemeanor cases under the provisions of Section 1905.10, Revised Code, is "coextensive with the county" except that in instances where the village is located within the territorial jurisdiction of a municipal court the mayor's jurisdiction in criminal cases is limited to those involving a violation of the ordinances of such village as provided in Section 1901.04, Revised Code.

2. Section 1901.04, Revised Code, as enacted in Amended House Bill No. 148, 102nd General Assembly, 127 Ohio Laws, 525, being the latest expression of the legislative will, prevails over provisions of such sections as amended by the General Assembly in the same legislative session in Amended Substitute House Bill No. 305, 127 Ohio Laws, 636, and in Amended House Bill No. 937, 127 Ohio Laws, 1039. Opinion No. 3146, Opinions of the Attorney General for 1953, page 526; and Opinion No. 3506, Opinions of the Attorney General for 1954, page 50, distinguished.

Columbus, Ohio, August 14, 1958

Hon. Mary F. Abel, Prosecuting Attorney
Logan County, Bellefontaine, Ohio

Dear Madam:

Your request for my opinion reads as follows:

"Our Court was first established as a Municipal Court and later given county wide jurisdiction. I know there have been many opinions given as to various questions in connection with the County Courts. However, I am unable to find an opinion relative to the question I have, ie:

"Since our Municipal Court now has County wide jurisdiction does the Mayor of a village have jurisdiction of misdemeanors in violation of a state statute?

"This problem arises largely in liquor law violations, Highway Patrol cases and charges preferred by the Lake Patrol for violations at Indian Lake-boat operations, etc.

"I would appreciate your opinion on this question. If it has been answered before am sorry I am unable to locate the opinion."

The jurisdiction of the mayor's court in cities and villages is prescribed in Chapter 1905., Revised Code. In Section 1905.10, Revised Code, the jurisdiction of a village mayor in general is stated in Section 1905.10, Revised Code, as follows:

> "The mayor of a village has final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is entitled by the constitution to a trial by jury. *The mayor's jurisdiction in such cases is coextensive with the county.* In keeping his dockets and files, making report to the county auditor, disposing of unclaimed moneys, and purchasing his criminal docket and blanks for state cases, the mayor shall be governed by the laws pertaining to justices of the peace." (Emphasis added)

Provision for trial by jury in a village mayor's court is found in Section 1905.14, Revised Code, but in any such case in which a jury trial is requested the mayor may elect to recognize the accused for trial in the common pleas or the probate court as provided in Section 1905.15, Revised Code.

This provision for jurisdiction "coextensive with the county" is in general terms, and must be deemed subject to limitation by later and special enactments on the subject. One such special enactment is Section 1901.04, Revised Code, which, prior to its amendment by the 102nd General Assembly, read in part as follows:

> "Upon the institution of a municipal court, the jurisdiction of the mayor and the police justice in all civil and criminal causes terminates within the municipal corporation in which such municipal court is located. All other majors within the territory may retain such jurisdiction as is now provided in all criminal causes *involving violation of ordinances of their respective municipal corporations* to be exercised concurrently with the municipal court. * * *" (Emphasis added)

This section is not only a later enactment than the general provision noted above in Section 1905.10, *supra,* but is special as well, and it plainly has the effect of amending such earlier and general provision by necessary implication. See *Engineering Co.* v. *Jones,* 150 Ohio St., 423; *State ex rel. Guilbert* v. *Halliday,* 63 Ohio St., 165.

In 1957, however, Section 1901.04, Revised Code, was thrice amended by the 102nd General Assembly. One such amendment is found in Amended Substitute House Bill No. 305 (127 Ohio Laws, 636), by which the municipal court act was extensively amended. This act was passed on May 29,

1957, approved by the Governor on June 17, 1957. Sections 1 and 2 of this act, including the amendment of Section 1901.04, Revised Code, became effective as emergency legislation on June 17, 1957. By this amendment Section 1901.04, Revised Code, was changed in pertinent part to read:

> "Upon the institution of a municipal court, the jurisdiction of the mayor and the police justice in all civil and criminal causes terminates 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 violation of ordinances of their respective municipal corporations * * * except traffic violations occurring on state highways. * * *"

This language, during the period of its efficacy, clearly had the effect of limiting the jurisdiction of village mayors, and specifically to deny them jurisdiction, even under their own vilage ordinances, in cases of moving violations on state highways.

Another such amendment of this section was effected in Amended House Bill No. 937 (127 Ohio Laws, 1039), an act which established the county court system and abolished the justice of the peace courts. This act was passed on May 29, and approved by the Governor on June 18, 1957. Absent an emergency provision, this act became a "law" on September 17, 1957, as a "ninety day bill" as provided in Section 1c, Article II, Ohio Constitution, but by its own terms did not become operative until January 1, 1958.

As carried in this act that portion of Section 1901.04, Revised Code, is identical with the language quoted above from this section as it existed prior to the 1957 legislative session.

Finally, this section was again amended in Amended House Bill No. 148 (127 Ohio Laws, 525), an act to establish the so-caled "point system" of revocation of licenses to operate motor vehicles. This act was passed on June 18, 1957, and approved by the Governor on June 22. Although this purported to be an emergency bill, and effective upon approval by the Governor, the failure of the Senate to vote separately on the emergency provision resulted in this act becoming effective as a "ninety day bill" on September 23, 1957. See *In Re Application of Braden,* 105 O. App., 285, appeal dismissed, 167 Ohio St., 548.

Section 1901.04, Revised Code, as amended in this act, reads in pertinent part:

"Upon the institution of a municipal court, the jurisdiction of the mayor and the police justice in all civil and criminal causes terminates 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 violation of ordinances of their respective municipal cor porations to be exercised concurrently with the municipal court.

"Such jurisdiction of all mayors within such territory shall terminate on January 1, 1960 over all moving traffic violations occurring on state highways including those within their respective municipal corporations. * * *"

At this point we confront the question of which of these three enactments of Section 1901.04, Revised Code, (1) is the law today, or (2) became operative as law for some temporary period. A situation somewhat similar to that here involved was present in *State* v. *Lathrop,* 93 Ohio St., 79. The facts there involved and the question presented to the court, may be ascertained from the following passage in the opinion by Nichols, C.J.:

"* * * It appears that the amendment to the section in question found in 103 Ohio Laws, page 340, was enacted into law by the general assembly on the 15th of April, 1913, and two days later, on the 17th of April, the general assembly again amended the same section by adding opium and its derivatives to the list of prescribed drugs. The disputed question arises over the fact that the governor, to whom, under the constitution, all bills must be transmitted after their passage by the general assembly—inadvertently, we may safetly assume—signed the bill later passed first; that is, he signed the act of April 17 on May 2 and that of April 15 on May 3.

"The bill signed on the 3d of May was the so-called agricultural commission enactment, amending many sections of the General Code, as well as enacting several supplementary sections.

"The bill signed on May 2 amended but one section and in addition repealed Section 12674.

"The court of appeals based its decision on the fact that the act signed on the 2d was repealed by the act of the governor in signing the act on the 3d, and counted of no effect the fact that the legislature passed the measure so held to have been repealed two days later than the measure which the court holds repealed it.

"The effect of this decision is that the bill last signed, although first passed, repealed the act first signed although later passed.

"We thus have presented the anomalous situation of the governor being granted an additional power of veto not contemplated

by the constitution. He may, if this decision is permitted to stand, by mere order of the time of signing, determine which of two acts relating to the same subject-matter may survive, and, although signing both, may kill the one as effectually as if he had vetoed it; and furthermore—as happened in this instance—may defeat the manifest purpose of the legislature by signing first in order the later expression thereof, and do this, it would appear, without intending to do so, and in effect defeat not only the intention of the legislature, but his own as well. * * *"

The reasoning of the court, and their conclusion on the point of law presented, may be shown by the following language in the opinion:

"* * * We are constrained to hold that the act last actually signed did not operate to repeal the act last passed. We are persuaded that the manifest purpose of the lawmaking power should not be defeated by means wholly beyond its control.

"It is the plain duty of the court to give effect, if at all possible, to the latest expression of the legislature on a given subject. And rather than vest the executive with the power of selection, which the constitution neither impliedly nor expressly grants to him—and, indeed, which the constitution in terms, by formal exclusion, denies to him—*we hold that the act of April 17, as the later expression of the general assembly, must prevail;* and we do this the more readily because thereby the clear intention of both the general assembly and the executive is given effect.

"Authority in support of this holding may be found in the case of *Southwark Bank* v. *Commonwealth,* 26 Pa. St., 446, wherein it was held:

" '1. The general rule is that where two statutes contain repugnant provisions, the one last signed by the governor is a repeal of the one previously signed.

" '2. This is so merely because it is presumed to be so intended by the lawmaking power; but where the intention is otherwise, and that intention is apparent from the face of either enactment, the plain meaning of the legislative power thus manifested is the paramount rule of construction.'

"The constitution of Pennsylvania on the subject of the governor's participation in legislation through the exercise of the veto power is substantially that of Ohio. The facts in the Pennsylvania case were in all respects similar to the instant case. The general assembly had passed, on the 9th of March, a certain statute, and five days later, on consideration of the same subject-matter, expressly repealed the law so passed five days previous. The governor, however, as in the instant case, signed the act of March 14 on the 15th of the same month, and the act of March 9

one day later. Nevertheless, the holding there, as indicated by the syllabus was to the effect that the act last passed, although first signed, was the law of Pennsylvania. * * *"

In the case at hand, the latest of these three expressions of legislative intent is quite evidently that found in Amended House Bill No. 148, passed on June 18, 1957, some three weeks after the passage of the two earlier acts herein described; and it is this enactment which I believe must prevail over the earlier enactment, regardless of the effective dates of each. I am the more firmly impelled to this conclusion in view of the fact that Amended House Bill No. 148, *supra,* as originally introduced, provided for the amendment only of Sections 4507.40 and 4513.37, Revised Code, 127 House Journal, 104, and that it was not until *June 18, 1957,* that the amendment of Section 1901.04, Revised Code, was included in the bill as the result of the work of a committee of conference to which the matter of the difference between the two houses had been referred. See 127 House Journal 1504 *et seq.*

In reaching this conclusion I am not unmindful of the holding of the court in *Bank* v. *Commonwealth,* 26 Pa. St., 446, apparently approved in the *Lathrop* case, *supra,* that the later date of passage is not the sole factor to be considered, and that this is the general rule only. In Opinion No. 3146, Opinions of the Attorney General for 1953, page 526, this general rule was not followed for the reason that the special circumstances of that case were such as to indicate a legislative intent contrary to such general rule. On this point the writer said:

"* * * In the instant case I am of the opinion that the intention of the Legislature that the provisions of Amended Substitute House Bill 24 should expire on October 1, 1953, is apparent from the face of the enactment itself. This intention is evidenced first by the change in the reporting date from October 1 to August 1, thus evincing an intention that the distribution of the $500,000 to the township authorities should be completed well in advance of October 1, thereby indicating a legislative notion, or understanding that Amended Substitute House Bill 24 would expire on that date. * * *"

Similarly, in Opinion No. 3506, Opinions of the Attorney General for 1954, page 50, the general rule noted above was not followed due to special circumstances pointed out by the writer of such opinion as follows:

"* * * It will be noted, of course, that Senate Bill No. 361 did not purport to repeal any the the amendments to the Revised

Code enacted subsequent to the passage of Amended House Bill No. 1 and which amendments were due to become effective on and after October 2, 1953. Instead, it repealed the 290 sections of the Revised Code, including Section 5719.01 'as enacted in House Bill No. 1 of the 100th General Assembly.' It would appear clear, therefore, that an express repeal of Section 5719.01, Revised Code, as enacted in Amended Senate Bill No. 147, was not effected and that Section 5719.01, Revised Code, as enacted in Amended Senate Bill No. 147 is still in force and effect unless it could be said to have been repealed by implication.

"Under the peculiar factual situation presented, I am of the opinion that the true legislative intent can not be determined by a blind acceptance of the test of giving effect to the statute which is later in time of passage. Here, I believe, such test is greatly outweighed by the fact that Amended Senate Bill No. 147 is clearly a considered substantive change of law enacted in a bill amending a single section of the law, while Senate Bill No. 361, in effect, is but a series of corrections deemed advisable as a sort of appendage to the previous recodification. The former is specific—the latter general. As noted before, Senate Bill No. 361 does not by its terms, repeal Section 5719.01, as amended by Amended Senate Bill No. 147.

"In view of the legislative history, I believe it clear that Section 5719.01, as amended by Amended Senate Bill No. 147, was not repealed by implication. * * *"

In the instant case no such special circumstances are to be found, and while I am in full agreement with the 1953 and 1954 rulings, *supra,* I conclude that here the general rule as to the latest expression of the legislative intent should be applied, and that Section 1901.04, Revised Code, as enacted in Amended House Bill No. 148, *supra,* must be deemed to prevail over the two earlier enactments herein discussed. Accordingly, it is my view that (1) this section as enacted in Amended Substitute House Bill No. 305, 127 Ohio Laws, 636, was effective as law during the period June 17, 1957, to September 23, 1957, (2) this section, as enacted in Amended House Bill No. 148, 127 Ohio Laws, 525, from September 23, 1957 to this date, and until hereafter amended or repealed, and (3) that such section, as enacted in Amended House Bill No. 937, 127 Ohio Laws 1039, never became effective as law.

In sum it is my opinion, in specific answer to your query:

1. The jurisdiction of a village mayor in misdemeanor cases under the provisions of Section 1905.10, Revised Code, is "coextensive with the county" except that in instances where the village is located within the territorial jurisdiction of a municipal court the mayor's jurisdiction in

criminal cases is limited to those involving a volation of the ordinances of such village as provided in Section 1901.04, Revised Code.

2. Section 1901.04, Revised Code, as enacted in Amended House Bill No. 148, 102nd General Assembly, 127 Ohio Laws, 525, being the latest expression of the legislative will, prevails over provisions of such section as amended by the General Assembly in the same legislative session in Amended Substitute House Bill No. 305, 127 Ohio Laws, 636, and in Amended House Bill No. 937, 127 Ohio Laws, 1039. (Opinion No. 3146, Opinions of the Attorney General for 1953, page 526; and Opinion No. 3506, Opinions of the Attorney General for 1954, page 50, distinguished.)

Respectfully,
WILLIAM SAXBE
Attorney General