

1807.

JUSTICE OF PEACE—FEES OF WITNESSES AND JURORS MAY BE PAID FROM COUNTY TREASURY WHERE JUSTICE OF PEACE HAD NO JURISDICTION IN TRIAL OF CASE.

SYLLABUS:

By virtue of Sections 13424-6 and 3014, General Code, where a justice of the Peace assumes final jurisdiction to try a case in which he has no statutory jurisdiction to try such case, the fees of jurors and witnesses in such proceeding can be legally paid out of the county treasury.

COLUMBUS, OHIO, November 2, 1933.

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

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

A justice of the Peace assumed jurisdiction in a case in which the defendant was charged with aiding a person to escape from jail, which is a violation of section 12833 of the General Code. A jury was demanded. The justice procured a jury under the provisions of section 13424-1 of the General Code, and proceeded to try the case. It being determined that the justice had no jurisdiction in such case, may the fees of jurors and witnesses be legally paid out of the county treasury?”

Section 13421-1, General Code, provides:

“In prosecutions before a magistrate, when imprisonment is a part of the punishment, if a trial by jury is demanded, the magistrate, not less than three days nor more than five days before the time fixed for trial, shall certify to the clerk of the court of common pleas of the county that such prosecution is pending before him. Failure to demand a jury as in this section provided, shall be deemed a waiver of the same.” (Italics the writer's.)

Section 13424-2, General Code, reads:

“Thereupon the clerk shall draw from the jury wheel containing the names of persons selected to serve as petit jurors in the court of common pleas in such county, twenty names which shall be drawn and counted in a like manner as for jurors in the court of common pleas. The clerk shall forthwith certify the names so drawn, to the magistrate, who, thereupon shall issue to any constable, chief of police or marshal in the county, a venire containing the names of the persons to serve as jurors in the case and make due return thereof.”

With reference to the jurors' expenses, section 13424-6, General Code, states:

"In such prosecutions, the jurors shall be entitled to the same mileage and fees as in criminal cases in the court of common pleas, and they shall be paid from the county treasury upon the certificate of the court." (Italics the writer's.)

Section 3014, General Code, provides with reference to fees for witnesses, inter alia:

"* * * Each witness attending before a justice of the peace, police judge or magistrate, or mayor, upon subpoena, in criminal cases, shall be allowed the fees provided for witnesses in the court of common pleas, and in state cases said fees shall be paid out of the county treasury, and in ordinance cases out of the municipal treasury, upon the certificate of the judge or magistrate, and the same taxed in the bill of costs. * * *"

In your inquiry you state that a justice of the Peace assumed final jurisdiction in a case in which the defendant was aiding a person to escape from jail, which is a violation of Section 12833, General Code. In such case the defendant demanded a jury trial, and expenses were incurred by the witnesses and jurors prior to the determination that the justice of the Peace had no final jurisdiction to try the case.

Section 13424-6, General Code, supra, referring to jurors' expenses and Section 3014, General Code, supra, providing for witnesses' fees are both broad enough in their scope to include a case where the justice of the Peace has assumed final jurisdiction even though it is later determined that such assumption of jurisdiction was erroneous. A narrow restriction of such statutes not to include such type of cases would be prejudicial to the public policy which favors citizens performing their public duty of serving as witnesses and jurors. It would put upon such jurors and witnesses the risk of incurring expenses in the performance of their duties without reimbursement if it were finally determined that the justice of the Peace had no final jurisdiction to try the case, for which they as witnesses and jurors were called. Where, as in the facts stated in your inquiry, the justice of the Peace erroneously called for a jury this should not prejudice the jurors as their summonses were regular on their face. The same reasoning is also applicable to witnesses called in such a proceeding.

Specifically answering your inquiry, it is my opinion that by virtue of Sections 13424-6 and 3014 General Code, that where a justice of the Peace assumes final jurisdiction to try a case in which he has no statutory jurisdiction to try such case, the fees of jurors and witnesses in such proceeding can be legally paid out of the county treasury.

Respectfully,

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