the provisions of this section shall not apply to * * * the returns made by incorporated companies, * * *."

In an opinion of this department, Opinions of the Attorney General, 1916, page 32, in construing Section 5366-1, General Code, at page 39, it is held that:

"It will be noted that the only purpose of this section is to fix a time as of which and the period within which the liability for taxes attaches and the valuation thereof is to be made, * * *."

Specifically answering your question it is therefore my opinion that the latest date on which a foreign corporation could have made the necessary election under Section 192 of the General Code so as to exempt its shares of stock held by Ohio shareholders from the general property tax in 1927, was the day preceding the first day of January as to the shares of stock held by corporations and the day preceding the second Monday in April as to its shares of stock held otherwise than by domestic corporations.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

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607.

RELEASE OF ACCUSED TAKEN INTO CUSTODY FOR VIOLATION OF SECTIONS 12603, ET SEQ., GENERAL CODE, DISCUSSED.

*SYLLABUS:*

*Under the provisions of Section 12627, General Code, when a judicial officer is not accessible an accused taken into custody for violation of Section 12603, et seq., General Code, is not entitled to be released from custody unless he gives his name and address to the arresting officer and deposits with him a sum equal to the maximum fine for the offense for which such arrest was made, or, if he is the owner, by leaving the motor vehicle, or, if he is not the owner, by leaving the motor vehicle, with the written consent of the owner, who must be present.*

COLUMBUS, OHIO, June 13, 1927.

HON. JOHN E. PRIDDY, *Prosecuting Attorney, Findlay, Ohio.*

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

"Since the United States Supreme Court decision in reference to justice courts the sheriff of this county has been taking violators of the speed laws before the probate judge on my advice.

Sections 12626-27-28 of the General Code provide for deputy sheriff taking a deposit for the appearance of a violator under certain conditions but those sections provide that the amount to be taken as a deposit must equal the maximum fine for the offense charged which in some cases amount to one hundred dollars.

Most of the offenses occur late Saturday afternoon and Sunday when the probate court is not in session and the sheriff feels that for the deputies to demand a deposit of one hundred dollars is placing a burden on such violators greater than they can stand ordinarily. The court has ordinarily been assessing a fine of twenty-five dollars. The sheriff has asked me if there was any way whereby the deputy could be authorized to accept a deposit of less than the maximum fine as fixed by statute and I am passing the question to your office.

It would seem to me that if any way could be devised whereby the deputies out on the road at times when they cannot bring the violator into court immediately could accept a deposit from the motorist equaling the usual maximum fine assessed that it would be fairer than to hold the motorist up for a hundred dollars which few of them have or put them in jail over Sunday night until court could convene Monday morning."

Section 12627, General Code, about which you inquire, provides:

"If a judicial officer is not accessible, the accused under the next preceding section shall forthwith be released from custody by giving his name and address to the officer making the arrest and depositing with such officer a sum equal to the maximum fine for the offense for which such arrest is made or instead, if he is the owner, by leaving the motor vehicle. If the accused is not the owner, he can leave the motor vehicle with a written consent given at the time by the owner who must be present."

The question you present is whether or not, under the provisions of this section, the arresting officer may release an accused from custody upon the deposit with him of any sum less than the maximum fine for the offense for which such arrest is made.

As stated in 36 Cyc. 1106:

"The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature. This intention, however, must be the intention as expressed in the statute, and *where the meaning of the language used is plain, it must be given effect by the courts*, or they would be assuming legislative authority." (Italics the writer's)

and on page 1114:

"* * * It is a very well-settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy and it is the plain duty of the court to give it force and effect."

In the case of *Columbus vs. Board of Elections*, 13 O. D. N. P. 452, it was said as follows:

"When the language of a statute is not only plain but admits of but one meaning the task of interpretation can not be said to arise."

Answering your question specifically I am of the opinion that inasmuch as the language used in Section 12627, supra, is clear and unambiguous no other construction can be placed thereon except as therein provided, viz., if a judicial officer

be not accessible the arresting officer may release an accused taken into custody for a violation of Section 12603, et seq., General Code, only upon his giving his name and address and depositing with such arresting officer a sum equal to the maximum fine for the offense for which such arrest is made, or if he is the owner, by leaving the motor vehicle, or if he is not the owner, by leaving the motor vehicle, with the written consent of the owner who must be present.

In this connection your attention is directed to Section 12626, General Code, which provides:

> "A person taken into custody, because of the violation of any provision of this subdivision of this chapter, shall forthwith be taken before a magistrate or justice of the peace in a city, village or county, and be entitled to an immediate hearing. If such hearing cannot be had, he shall be released from custody on giving his personal undertaking to appear in answer for such violation at such time or place as shall then be indicated, secured by a deposit of a sum equal to the maximum fine for the offense with which he is charged; or, in lieu thereof, if he be the owner, by leaving the motor vehicle. If the person so taken is not the owner he can leave the motor vehicle with a written consent given at the time by the owner, who must be present, with such judicial officer."

Mayors and justices of the peace have criminal jurisdiction in misdemeanor cases throughout the county in which they are elected unless such jurisdiction is specifically limited by the various municipal court acts. The sections about which you inquire are misdemeanors and inasmuch as the penalty for a violation thereof may be imprisonment the accused is entitled to a trial by jury.

Your atention is directed to Sections 13510 and 13511, General Code. It is provided in the former section that when a person charged with a misdemeanor *upon complaint of the party injured* enters a plea of guilty thereto a magistrate shall sentence him to such punishment as he may deem proper according to law; but if the complaint is not made by the party injured and the accused pleads guilty, such magistrate shall require the accused to enter into a recognizance to appear in the proper court as is provided when there is no plea of guilty.

What is meant in Section 13510, supra, by the term "party injured" is defined by the Supreme Court of Ohio in the case of *Hanaghan vs. State,* 51 O. S. 24, wherein the court said:

> "If every citizen of the state, or member of the community where the offense is committed, is included in those descriptive words, this proceeding in error is without merit. But it is evident they were not used in the statute in that sense. They refer, we think, to the person who suffers some particular injury from the commission of the offense, either in his person, property or reputation, as distinguished from that which results to the general public or local community."

It is apparent that an offense under the so-called "Speed Law" is not in the class of misdemeanors in the commission of which there may be an "injured party", in the sense as above defined by the court.

It follows, therefore, that when a complaint is made under Sections 12603, et seq., General Code, the magistrate has no jurisdiction upon a plea of "guilty" to impose the penalty of the law, but is required, as provided in Sections 13510 and 13511, General Code, to order the defendant to enter into a recognizance for his appearance at the proper court, unless said defendant, at the proper time should in

writing waive the right of a trial by jury and submit to be tried by the magistrate as provided in Section 13511, General Code. Where a plea of not guilty is entered, unless a waiver of trail by jury is filed, the justice of the peace likewise may only act as a committing magistrate.

Without quoting in full the provisions of Section 13511, General Code, it is sufficient to say that in cases of misdemeanor, it permits the accused to waive, in a writing subscribed by him and filed before or during the examination, the right of trial by jury and to submit to be tried by the magistrate. When the accused acts in accordance with these provisions of Section 13511, General Code, the magistrate is vested with jurisdiction to hear the cause and render final judgment.

It is my opinion that by the filing of such a waiver, the accused voluntarily submits his person to the jurisdiction of the court. The decision of the United States Supreme Court in the case of *Tumey vs. State of Ohio* would not apply in such a case because the defendant, by his own act, waives any objection that he might have made to the qualification of the magistrate to hear and determine the cause which may exist because of the magistrate's pecuniary interest. The court having both jurisdiction of the subject matter and of the person of the defendant could therefore render final judgment.

As provided in Section 12626, supra, it is mandatory that the arresting officer *forthwith* take a person accused of violating Sections 12603, et seq., General Code, before a justice of the peace, mayor or other magistrate, before whom he is entitled to immediate hearing. Only in the event a judicial officer is not accessible can the provisions of Section 12627, supra, be invoked. If the arresting officer fails to comply with the letter and spirit of these sections of the General code he may render himself liable in a civil action for false imprisonment.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

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608.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN MEIGS, MONROE AND SCIOTO COUNTIES.

COLUMBUS, OHIO, June 13, 1927.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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609.

GAME REFUGE LEASES—9 APPROVED—1 DISAPPROVED.

COLUMBUS, OHIO, June 13, 1927.

*Department of Agriculture, Division of Fish and Game, Columbus Ohio.*

DEAR SIR:—I have your letter of April 20th, 1927, in which you enclose ten Game Refuge Leases, in duplicate, for my approval, including the following: