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A MAYOR OF A VILLAGE IN WHICH A MUNICIPAL COURT IS LOCATED HAS NO CRIMINAL JURISDICTION BUT EVERY OTHER MAYOR OF A VILLAGE HAS JURISDICTION IN ALL CRIMINAL CASES—§§1901.04, 1907.031, 1905.01, 1905.09, R.C.

SYLLABUS:

The criminal jurisdiction of a mayor of a village is governed by the provisions of Sections 1901.04 and 1907.031, Revised Code, and, under these sections, a mayor of a village in which a municipal court is located has no criminal jurisdiction but every other mayor of a village has jurisdiction in all criminal causes involving violations of ordinances of the village and in all criminal causes involving moving traffic violations occurring on state highways located within the village; and such jurisdiction is concurrent with the municipal court if the village is located in a municipal court territory, and is concurrent with the county court if the village is located in a county court district.

Columbus, Ohio, July 13, 1960

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“Officials of certain villages in the state have raised a question as to the jurisdiction of a village mayor to hear and determine cases prosecuted under statutes of the state in view of recent amendments to the laws governing the mayor’s court.

“It is pointed out that where a city does not have a police court or municipal court, R.C. 1905.01 (effective 11-6-59) appears

to grant to the mayor final jurisdiction to hear and determine a prosecution for violation of an ordinance of the municipality (unless imprisonment is prescribed as part of the punishment), and jurisdiction in all criminal cases involving moving traffic violations on state highways within the city.

“By comparison, however, the final jurisdiction granted, in R.C. 1905.09, to the mayor of a village which is without a police court or a municipal court, appears to be limited to the power to hear and determine prosecutions for violation of ordinances of the village which do not prescribe imprisonment as a part of the punishment.

“On the other hand it is seen that R.C. 1907.011 established county court districts comprising all territory in the state which is not subject to the territorial jurisdiction of a municipal court. Thus it is apparent that each municipality in the state is necessarily located within the territorial jurisdiction of either a county court or a municipal court.

“R.C. 1901.04 provides that when a municipal court is established in a municipality, the jurisdiction of the mayor and police justice terminates within the municipal corporation with respect to all civil and criminal causes. However, all other mayors within the municipal court territory are permitted to retain ‘* * * such jurisdiction as is now provided in all criminal causes involving violation of ordinances of their respective municipal corporations and in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipalities.’

“R.C. 1907.031 provides that as of November 6, 1959 the jurisdiction of mayors, located within a county court district, to hear and determine prosecutions for felonies or misdemeanors was terminated. Since that date mayors within such district ‘* * * may retain such jurisdiction as is now provided in all criminal causes involving violations of ordinances of their respective municipal corporations and in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations, to be exercised concurrently with the county court * * *.’

“Your formal opinion is respectfully requested as to the extent of criminal jurisdiction which the mayor of a village has authority to exercise under present laws. Your answer will have widespread interest for officials of cities and villages throughout the state.”

Immediately prior to November 6, 1959, mayors of villages and cities located in county court districts had jurisdiction over local ordinance cases and extensive jurisdiction in state misdemeanor cases. This included juris-

diction over all state cases involving moving traffic violations occurring on state highways located within their respective municipal corporations. At the same time, the jurisdiction of mayors of villages and cities located in municipal court territory was limited to local ordinance cases only.

In Amended House Bill No. 571 of the 103rd General Assembly, effective November 6, 1959, the jurisdiction of mayors in county court districts was reduced, and that of mayors in municipal court territory was expanded, the present question being the actual effect of the bill on such jurisdiction. There appears to be no question regarding jurisdiction over local ordinance cases. Also, as will be seen, there is little doubt that under the bill mayors of cities have jurisdiction to hear state cases involving moving traffic violations occurring on state highways. The main question raised by your request appears to be whether mayors of villages have such jurisdiction.

The pertinent statutes pertaining to the jurisdiction of mayors' courts are Sections 1901.04, 1905.01, 1905.09 and 1907.031, Revised Code, which were all amended in Amended House Bill No. 571, *supra*. Section 1905.01, *supra*, deals specifically with the jurisdiction of the mayor of a city, and Section 1905.09, *supra*, deals only with the mayor of a village. Said sections read as follows:

Section 1905.01:

"In cities not having a police court and not being the site of a municipal court, the mayor has final jurisdiction to hear and determine any prosecution for the violation or an ordinance of the municipal corporation, unless imprisonment is prescribed as part of the punishment, and has jurisdiction in all criminal causes involving moving traffic violations occurring on state highways located within the boundaries of the municipal corporation.

"In keeping this docket and files, the mayor shall be governed by the laws pertaining to county courts." (Emphasis added)

Section 1905.09:

"In villages not having a police court and not being the site of a municipal court, the mayor has final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the municipal corporation, unless imprisonment is prescribed as part of the punishment. In keeping his dockets and files, the mayor shall be governed by the laws pertaining to county courts." (Emphasis added)

Under Sections 1905.01 and 1905.09, *supra*, mayors of cities (except those excluded) have final jurisdiction in cases involving ordinances of their respective municipal corporations and in all criminal causes involving moving traffic violations occurring on state highways located within the boundaries of such municipal corporations, while mayors of villages (except those excluded) have final jurisdiction in cases involving ordinances of their respective municipal corporations only. To fully determine the jurisdiction of mayors' courts, however, it is necessary to consider the provisions of Sections 1901.04 and 1907.031, *supra*.

Section 1901.04, *supra*, reads 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 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 and in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations, to be exercised concurrently with the municipal court.*

“* * *

* * *

* * *”

(Emphasis added)

Section 1907.031, *supra*, reads in part as follows:

“As of the effective date of this section, the jurisdiction of mayors to hear and determine prosecutions for felonies or misdemeanors terminates within the county court district. Thereafter, mayors within the district may retain such jurisdiction as is now provided in all criminal causes involving violation of ordinances of their respective municipal corporations and in all criminal causes involving *moving traffic violations occurring on state highways located within their respective municipal corporations, to be exercised concurrently with the county court.*

“All causes, judgments, executions, and proceedings then pending in mayors courts to which their jurisdiction is terminated shall proceed in the county court as if originally instituted therein. The parties may make such amendments to their pleadings as are required to conform to the rules of the county court.

“* * *

* * *

* * *”

(Emphasis added)

Sections 1901.04 and 1907.031, *supra*, deal with the retention of jurisdiction by mayors of villages and cities located in municipal court territory and in county court territory. As you note in your request, each municipality in the state is located either in municipal court territory or in county court territory (see Section 1907.011, Revised Code). The words “mayors within the territory may retain such jurisdiction” and “mayors within the district may retain such jurisdiction” presumably mean that as of November 6, 1959, the effective date of Amended House Bill No. 571, *supra*, such mayors retain the jurisdiction that they had before that date over *all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations.*

Immediately prior to November 6, 1959, the jurisdiction of a mayor’s court in a municipal court territory was governed by Section 1901.04, Revised Code, the pertinent part of which *then* 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* to be exercised concurrently with the municipal court.

“* * *

* * *

* * *”

(Emphasis added)

Thus, immediately prior to November 6, 1959, the jurisdiction of a mayor of a municipal corporation located with the territory of a municipal court was limited to cases involving violations of ordinances of the municipal corporation. He had no authority to hear cases involving violations of state statutes. Accordingly, as to such mayors, Section 1901.04, Revised Code, as effective on November 6, 1959, apparently confers no added jurisdiction.

Immediately prior to November 6, 1959 a mayor of a municipal corporation located within a county court district had jurisdiction over ordinances of the municipal corporation and over state misdemeanor cases occurring anywhere in the district (Sections 1905.01, 1905.02, 1905.09, and 1905.10—as then existing). This included jurisdiction to hear all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations, thus, this jurisdiction is retained by such mayors under Section 1907.031, *supra*, as effective on November 6, 1959.

Under the specific language of Section 1905.01, Revised Code, as now existing, mayors of cities have jurisdiction in *all* criminal causes involving moving traffic violations occurring on state highways located within the boundaries of this municipal corporations. Thus, whether or not present Section 1901.04, *supra*, confers such jurisdiction on mayors of *cities* located within municipal court territory, is not governing. This is not true, however, as to the question of whether or not said Section 1901.04 confers such jurisdiction on mayors of *villages* located within municipal court territory.

The specific section of law pertaining to the jurisdiction of a mayor of a village is Section 1905.09, *supra*. This section gives a mayor of a village jurisdiction to hear cases involving violations of ordinances of the municipal corporation only. Thus, any further jurisdiction of such a mayor must be authorized by Sections 1901.04 and 1907.031, *supra*, as now existing. As discussed above, there is a question as to whether Section 1901.04, *supra*, confers any added jurisdiction on mayors in municipal court territories while the intent of Section 1907.031, *supra*, is apparently to give mayors in county court districts jurisdiction over all criminal causes involving moving traffic violations occurring on state highways in the municipal corporation.

It might well be argued that Section 1905.09, Revised Code, being a specific provision of law, governs as to the jurisdiction of a mayor of a village (*State ex rel. Conners v. DeMuth*, 96 Ohio St., 118; Opinion No. 2244, Opinions of the Attorney General for 1940, page 450). This would mean that mayors of villages would have one type of jurisdiction and mayors of cities, another. Also, were I to hold that under Section 1907.031, *supra*, a mayor of a village located in a county court district has jurisdiction to hear state cases involving moving traffic violations occurring on state highways located within the village, while at the same time holding that a mayor of a village located in municipal court territory does not have such jurisdiction, it would result in a variance between the jurisdiction of certain mayors of villages depending on the location of the villages.

In considering the instant question, the apparent intent of the legislature in enacting Amended House Bill No. 571, *supra*, should be reviewed. In this regard, I am of the opinion that the language used in Sections 1901.04 and 1907.031, *supra*, demonstrates a legislative intent to give all mayors the same jurisdiction, that being jurisdiction over cases involving ordinances of their respective municipal corporations and over state cases involving moving traffic violations occurring on state highways located

in their respective municipal corporations. Such specific jurisdiction is, as noted above, specifically given to mayors of cities by Section 1905.01, *supra*. While Section 1905.09, *supra*, pertaining to mayors of villages, does not confer jurisdiction over such state cases, the omission of such authority in the section, in view of the language of Sections 1901.04, 1905.01, and 1907.031, *supra*, appears to me to have been an oversight by the legislature.

Regarding the purpose of the legislature in enacting a statute, it is stated in 37 Ohio Jurisprudence, Section 361, at page 656:

“The presumption is that the general assembly had a definite purpose in each and every enactment and all its provisions. Moreover, judicial notice may be taken of the purpose of enacting a particular statute where such purpose is a matter of sufficient common knowledge.”

In Section 362 of the same volume, starting at page 659, it is stated:

“* * * If the words and language are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. Accordingly, it is not surprising to find the courts frequently referring to the legislature’s purpose, or plan, or aim, or end, or motive.”

And, in Section 363 of the same volume, starting at page 663, it is stated:

“* * * When the real design of a legislature, in ordaining a statute, although it is not precisely expressed, is yet plainly perceivable or ascertainable with reasonable certainty, the language of the statute should be given such a construction as will carry that design into effect.”

While, as noted earlier, the provisions of Section 1901.04, *supra*, apparently do not confer any jurisdiction, it was the evident intention of the legislature that they should confer jurisdiction. Otherwise the words, “all the 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 and in all criminal causes involving moving traffic violations occurring on state highways located within their respective municipal corporations * * * would not have been included in the law. Obviously, the legislature must have thought that these words granted some jurisdiction as it is the rule not to assume that the legislature intended the doing of a vain thing (37 Ohio Jurisprudence, 635). Accordingly, I

am constrained to the opinion that the jurisdiction of a mayor of a village in criminal cases should be determined by the provisions of Sections 1901.04 and 1907.031, Revised Code. Under Section 1901.04, Revised Code, a mayor of a village located in a municipal court territory (except a mayor of the municipal corporation in which a municipal court is located) has jurisdiction to hear cases involving violations of ordinances of the municipal corporation and to hear misdemeanor cases involving moving traffic violations occurring on state highways within the municipal corporation, and, as noted above, under Section 1907.031, Revised Code, a mayor of a village located in a county court district has the same jurisdiction.

In passing, I might note that the jurisdiction of a mayor to hear a case where the defendant is entitled to trial by jury is dependent upon whether said defendant waives such right in writing (see Sections 2937.08 and 2938.04, Revised Code; also discussion in Opinion No. 1208, Opinions of the Attorney General for 1960, issued on March 24, 1960). For answer to the instant question, however, I do not deem it necessary to further discuss this aspect.

In conclusion, therefore, it is my opinion and you are advised that the criminal jurisdiction of a mayor of a village is governed by the provisions of Sections 1901.04 and 1907.031, Revised Code, and, under these sections, a mayor of a village in which a municipal court is located has no criminal jurisdiction but every other mayor of a village has jurisdiction in all criminal causes involving violations of ordinances of the village and in all criminal causes involving moving traffic violations occurring on state highways located within the village; and such jurisdiction is concurrent with the municipal court if the village is located in a municipal court territory, and is concurrent with the county court if the village is located in a county court district.

Respectfully,

MARK MCELROY
Attorney General