

HEALTH, STATE DEPARTMENT OF — SECTION 13422-2, PARAGRAPH 13, G.C. — JUSTICE OF PEACE — NO JURISDICTION TO RENDER FINAL JUDGMENT IN CRIMINAL PROCEEDING, VIOLATION SECTION 1261-14 G.C. — SAID DEPARTMENT, NOT LIABLE FOR COSTS WHERE DEPUTY PLUMBING INSPECTOR INSTITUTED CRIMINAL PROCEEDING BEFORE JUSTICE OF PEACE, VIOLATION, SECTION 1261-14 G.C., ACCUSED BOUND OVER TO GRAND JURY, NO INDICTMENT.

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SYLLABUS:

1. *The provision of Paragraph 13 of Section 13422-2, General Code, does not grant to a justice of the peace jurisdiction to render final judgment in a criminal proceeding involving violation of Section 1261-14, General Code.*

2. *No liability for costs is incurred by the Department of Health of the State of Ohio where a duly appointed and authorized deputy plumbing inspector of the Department of Health institutes a criminal proceeding before a justice of the peace against a person found violating the provisions of Section 1261-14, General Code, where the justice of the peace acts as an examining magistrate and binds the accused over to the grand jury, which body fails to render an indictment against such person.*

Columbus, Ohio, March 8, 1941.

Dr. R. H. Markwith, Director of Health,  
Columbus, Ohio,

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“This department is in receipt of the ‘criminal cost bill’ in the case of State of Ohio vs. John Glenn. The incidents connected with this case are as follows:

On March 22, 1940, Mr. A., a deputy inspector of plumbing of this department, observed, while going through the village of New Concord, that plumbing had been installed in a building owned by Mr. B. The said building consists of a basement used as a plumbing shop; a first floor used as an auto sales room, a garage and wash rack; the second floor is used as an apartment.

Mr. B., who is also a plumber, had installed a toilet on the first floor and bath room on the second floor. Standard pipe had been used in this installation; no fixtures were vented and the stack through the roof was 4" pipe. Tile pipe had been used under the basement floor with part of it exposed in the wall. The garage drain was constructed of tile with no vent, and all connected to the same sewer.

Following the inspection as to the method of installation of plumbing in this building, Mr. A. gave to Mr. B. an order to remove the same and to install plumbing as prescribed by the Ohio State Building Code, Section 12600-137 et seq., General Code, and also called Mr. B's attention to the fact that plans had not been submitted to the Department of Health or a permit secured from this department.

Some two or three weeks later, on going through New Concord, Mr. A. made an inspection to see whether or not the previous order had been complied with, and found the plumbing installation had not in any particular been changed.

On June 20, 1940, Mr. A. filed an affidavit with a justice of the peace for Falls township, Muskingum county. Hearing was set for June 28, 1940. Owing to the impossibility of Mr. A. being in Zanesville on that date, the hearing was postponed to August 30, 1940, at which time a continuance was allowed at the request of Mr. B.'s attorney, and a further date for hearing was set for Tuesday, September 17th. Before going to Zanesville on that date, Mr. A. was informed that counsel for Mr. B. had requested a further continuance. At the time set for the hearing, said counsel entered a plea of not guilty for Mr. B. and requested that Mr. B. be bound over to the Grand Jury, which was done. In a letter under date of October 5th, the justice of the peace notified Mr. A. that the 'Grand Jury did not find an indictment in the case against Mr. B. and he cannot therefore be compelled to pay costs.' So far as this department is informed no evidence of any kind was presented to the Grand Jury on which a decision could be reached.

It has been the understanding of this department that in corporations where a building department has not been provided, and plumbing regulations have been adopted and are enforced, cases of violation of the plumbing provisions of the Ohio State Building Code; the regulations of this department requiring the submission of plans for approval, and the granting of permits to install plumbing in buildings other than single or double dwellings, a justice of the peace, under the provisions of the last clause of Paragraph 13, Section 13422-2 of the General Code, has final jurisdiction, and that, therefore, the binding of this plaintiff to the Grand Jury was not a proper procedure.

I shall be glad to have your opinion in regard to the legality of the procedure in the justice of the peace court, and also what disposition shall be made of this 'criminal cost bill'."

Section 1261-2, General Code, granting to the Department of Health the authority to regulate the installation of plumbing in buildings covered by the Act, and the employment of plumbing inspectors, reads as follows:

"In the department of health there shall be such number of plumbing inspectors as the necessities of the work shall require and the appropriations for such inspections will permit. Such inspectors shall be practical plumbers with at least seven years' experience, and skilled and well trained in matters pertaining to sanitary regulations concerning plumbing work.

The department of health shall have the power to make and enforce rules and regulations governing plumbing and register those persons engaged in or at the plumbing business to carry out the provisions of this act.

Plans and specifications for all sanitary equipment or drainage to be installed in or for buildings coming within the provisions of this act shall be submitted to and approved by the department of health before the contract for installation of the sanitary equipment or drainage shall be let."

Section 1261-3, General Code, prescribing the duties of a plumbing inspector, reads as follows:

“It shall be the duty of said inspector of plumbing, as often as instructed by the state board of health, to inspect any and all public or private institutions, sanitariums, hospitals, schools, prisons, factories, workshops, or places where men, women or children are or might be employed, and to condemn any and all unsanitary (insanitary) or defective plumbing that may be found in connection therewith, and to order such changes in the method of construction of the drainage and ventilation, as well as the arrangement of the plumbing appliances, as may be necessary to insure the safety of the public health.

Such inspector shall not exercise any authority in municipalities or other political subdivisions wherein ordinances or resolutions have been adopted and are being enforced by the proper authorities regulating plumbing or prescribing the character thereof.”

It will be observed that the powers of the Department of Health through its plumbing inspectors extends to and includes all unsanitary and defective plumbing that may be found within workshops, or places where men, women or children are or may be employed. For the reason that a plumbing shop, auto sales room and garage are places of business wherein the persons mentioned above might be employed, it is clearly apparent that the premises involved herein would come within the jurisdiction of the Department of Health for the purpose of regulating the installation and operation of plumbing therein.

Section 1261-6, General Code, requiring a permit to be procured before installing plumbing in buildings covered by the provisions of the Act, reads as follows:

“No plumbing work shall be done in this state in any building or place coming within the jurisdiction of the state inspector of plumbing, except in cases of repairs or leaks in existing plumbing, until a permit has been issued by the state inspector of plumbing and the executive officer of the state board of health. Before granting such permit, an application shall be made by the owner of the property or by the person, firm or corporation who is to do the work. Such application shall be made on blanks prepared for the purpose, and each application shall be accompanied by a fee of one (1) dollar, and an additional fee of fifty (50) cents for each trap or vented fixture up to and including ten fixtures, and for each trap or vented fixtures over ten a fee of twenty-five (25) cents. The fees so collected shall be paid into the state treasury and credited to the general revenue fund. Whenever a reinspection is made necessary by the failure of the plumbing contractor to have the work ready for inspection

when so reported, or by reason of faulty or improper installation, he shall pay a fee of ten (10) dollars for each such inspection."

It shall be assumed that Mr. B. was charged with the violation of Section 1261-14, General Code, which section reads as follows:

"Any person or persons, owner, agent or manager refusing, failing or neglecting to comply with any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than ten nor more than one hundred dollars, or imprisoned for not less than ten nor more than ninety days or both; but no person shall be imprisoned under this section for the first offense, and the prosecution shall always be as and for a first offense, unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a second or repeated offense."

Section 1261-15, General Code, providing for the prosecution of violations of the Act here involved, reads as follows:

"It shall be the duty of said inspector of plumbing upon receipt of the knowledge that any part of this act (G.C. Sections 1261-2 to 1261-6, Sections 1261-8 to 1261-13 and Section 1261-15) has been violated, to go before any justice of the peace within the county, or a justice of the peace, mayor or police judge of the municipality where the offense was committed or the offending person resides, and cause the arrest and prosecution of all persons of whom he has reason to believe are guilty of such violations."

The foregoing section confers county wide jurisdiction upon justices of the peace for the prosecution of violations herein. As to whether a justice of the peace has as a matter of right the authority to render final judgment in prosecutions involving such violations is the next question to be considered.

Section 13422-2, General Code, to which you refer in your inquiry, reads in part as follows:

"\* \* \* Provided, further, however, that justices of the peace shall have jurisdiction within their respective counties in all cases of violation of any law relating to: \* \* \*

13. The failure to place and keep in a sanitary condition a bakery, confectionery, creamery, dairy, dairy barn, milk depot, laboratory, hotel, restaurant, eating-house, packing-house, slaughter-house, ice cream factories, or place where a food product is manufactured, packed, stored, deposited, collected, prepared, produced or sold for any purpose, or for the violation of any law relating to public health;"

In order for a justice of the peace to acquire jurisdiction to render

final judgment in the offense charged in the case you present it is necessary that the law which was violated relate to the public health. While there can be little doubt but that Section 1261-14, General Code, is a law designed for the protection of the public health, inasmuch as it bestows upon the Department of Health the authority to enforce its orders, the compliance or non-compliance with which directly affect the public health, it is my belief that this section is not one of the laws contemplated under the provision of Paragraph 13 of Section 13422-2, supra, as a law relating to the public health.

It will be observed that the gist of the action contemplated by Paragraph 13 of Section 13422-2, supra, is the failure to place and keep in a sanitary condition certain places where food products are generally found, processed, stored, or sold. The clause of Paragraph 13 above mentioned which reads, "or for the violation of any law relating to the public health" clearly refers to any law designed for the protection of the public health through legislation enacted to protect food products intended for human consumption.

In this connection your attention is directed to Crawford on Statutory Construction, Section 191, page 326, wherein the author states in discussing the rule of ejusdem generis:

"Where general words follow the designation of particular things, or classes of persons or subjects, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated. \* \* \* This is the rule known as 'ejusdem generis', and it is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would not have been mentioned. It is especially applicable to penal statutes \* \* \*."

Since the offense involved herein was not one in which the justice of the peace had jurisdiction to render final judgment, it must be concluded that he followed the correct procedure in ordering the accused bound over to the grand jury upon the accused entering a plea of not guilty.

Passing now to consider what disposition should be made of what you denominate as a "criminal cost bill" rendered to your department by the justice of the peace before whom the criminal cause involved herein was litigated. It appears to be an elementary rule of law that in the absence of a statute so providing, the state is not liable for costs incurred

in a criminal prosecution. *Fairmont Creamery Co. v. Minn.*, 275 U. S. 70. In an opinion rendered by one of my predecessors appearing in Opinions of the Attorney General for 1932, page 1460, the then Attorney General stated at page 1462 of that opinion as follows:

“There is no statute authorizing the taxing of the costs of an examining magistrate against the state where a grand jury fails to indict a person bound over by a justice of the peace acting as an examining magistrate, either in a misdemeanor or felony case. The mere fact that no compensation is provided for or allowance made in those cases wherein the accused is not indicted by a grand jury after being bound over by a justice of the peace is one of the burdens which attaches to the office of a justice of the peace and which is assumed when a person is elected thereto. This is so even though the services performed in criminal proceedings by a justice of the peace as an examining magistrate are required by statute. The fact that a justice may not receive compensation for certain services rendered is not unique to the law \* \* \*.”

It is therefore my opinion in specific answer to your inquiry that:

1. The provision of Paragraph 13 of Section 13422-2, General Code, does not grant to a justice of the peace jurisdiction to render final judgment in a criminal proceeding involving violation of Section 1261-14, General Code.

2. No liability for costs is incurred by the Department of Health of the State of Ohio where a duly appointed and authorized deputy plumbing inspector of the Department of Health institutes a criminal proceeding before a justice of the peace against a person found violating the provisions of Section 1261-14, General Code, where the justice of the peace acts as an examining magistrate and binds the accused over to the grand jury, which body fails to render an indictment against such person.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.