

year 1921, which are unpaid and a lien. Said abstract discloses that no examination was made in any of the United States courts.

You have also submitted a certificate from the Auditor of State, made in pursuance to the provisions of section 2288-2 G. C., to the effect that there is a balance in the "Interest on Endowment Fund, Ohio State University" sufficient to cover a contract for the purchase of said premises, copy of which is enclosed herewith. Said certificate in my opinion fully complies with the requirements of the law.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2243.

JUSTICES OF PEACE—DO NOT HAVE FINAL JURISDICTION IN CASES ARISING UNDER SECTIONS 12603 TO 12628-1 G. C. (MOTOR VEHICLE VIOLATIONS) EXCEPT IN CASES COMING WITHIN PROVISIONS OF SECTIONS 13510 AND 13511 G. C.—MAYORS' COURTS AND POLICE COURTS HAVE FINAL JURISDICTION IN MISDEMEANORS—MAY EXERCISE SUCH JURISDICTION IN PROSECUTIONS UNDER SECTIONS 12603 TO 12628-1 G. C.

1. *Justices of the peace do not have final jurisdiction, excepting where such jurisdiction is expressly provided by statute. It follows that they do not have final jurisdiction in cases arising under sections 12603 to 12620-1 G. C., except in those cases coming within the provisions of sections 13510 and 13511 G. C.*

2. *By authority of sections 4528 and 4577 G. C., mayors' courts and police courts have final jurisdiction in misdemeanors and may exercise such jurisdiction in prosecutions arising under sections 12603 to 12628-1 G. C.*

COLUMBUS, OHIO, July 12, 1921.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your recent letter reads as follows:

"Section 12626 G. C. provides as follows:

'Proceedings under preceding sections. 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 of the 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.'

This department desires your opinion as to whether or not the magistrate or justice of the peace has final jurisdiction in cases referred to in the preceding sections."

It will be assumed that in the use of the term "magistrate" in your question you refer to the courts of inferior and limited jurisdiction in addition to a justice's court. However, it is believed that it will be sufficient for your purposes if this opinion is limited to the jurisdiction of mayors, police judges, and justices of the peace.

It perhaps should be noted herein that the acts establishing each municipal court must be examined in each particular case in order to determine its jurisdiction.

Undoubtedly, when you refer to final jurisdiction, you mean the authority of the court to try the defendant on the charge made against him, and impose a penalty or acquit him, as contradistinguished from the authority to inquire whether an offense has been committed and discharge or bind him over to another court.

It is a well established rule of Ohio jurisprudence that justices of the peace and magistrates have only such jurisdiction as is conferred by statute.

Section 13422 G. C., relating to the criminal jurisdiction of justices of the peace, provides :

"A justice of the peace shall be a conservator of the peace and have jurisdiction in criminal cases throughout the county in which he is elected and where he resides, on view or on sworn complaint, to cause a person, charged with the commission of a felony or misdemeanor, to be arrested and brought before himself or another justice of the peace, and, if such person is brought before him, to inquire into the complaint and either discharge or recognize him to be and appear before the proper court at the time named in such recognizance, or otherwise dispose of the complaint as provided by law. He also may hear complaints of the peace and issue search warrants."

The above section should be construed in conjunction with sections 13510 and 13511 G. C. By the former it is provided that when a person charged with a misdemeanor is brought before a magistrate on complaint of the party injured and pleads guilty thereto, such magistrate shall sentence him to such punishment as he may deem proper, according to law, and order the payment of costs; and the latter section provides that if the offense charged is a misdemeanor and the accused, in writing, waives a jury and submits to be tried by the magistrate, he may render final judgment.

It is clear that a justice may either discharge or bind over unless the case should come within the exceptions above mentioned or unless there is special legislation conferring final jurisdiction, which has been done in many instances. However, the court in the case of *State ex rel. vs. Renz*, 26 O. A. R. 391, said :

"Courts will not extend the jurisdiction of a justice's court by construction beyond the plain language of the statute giving such jurisdiction."

In view of the above ruling it is believed that the statute which you quote and the related section contain no such provision. Therefore the conclusion is that a justice of the peace does not have final jurisdiction in prosecutions under the statutes to which you refer, excepting in cases which come within the terms of sections 13510 and 13511 G. C. above mentioned.

In considering the jurisdiction of mayors your attention is invited to sections 4528, 4530, and 4532 G. C., which provide :

"Sec. 4528. He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is, by the constitution, entitled to a trial by jury, and his jurisdiction in such cases shall be co-extensive with the county * * *."

"Sec. 4530. He shall have such jurisdiction in the cases mentioned in the last two sections, notwithstanding the right to a jury, if before the commencement of the trial, the accused waives a jury trial."

"Sec. 4532. If the charge is the commission of a misdemeanor, prosecuted in the name of the state, and the accused, being entitled to a jury, does not waive the right, the mayor may, nevertheless, impanel a jury, and try the case on the affidavit, in the same manner, and with like effect, as such cases are tried in the court of common pleas on the indictment."

It is believed the above sections are clear as to the authority of a mayor to exercise final jurisdiction in misdemeanors. See *De Muth vs. State ex rel.*, 7 O. A. R. 245.

A distinction will be noted between the jurisdiction of a mayor and a justice, in particular in reference to the provisions of section 4532 G. C., which authorizes the mayor to impanel a jury in the trial of a case in the event the accused does not waive the right to a jury.

Section 4577 G. C., relating to the jurisdiction of police courts, provides:

"The police court shall have jurisdiction of, and to hear, finally determine, and to impose the prescribed penalty for, any offense under any ordinance of the city, and of any misdemeanor committed within the limits of the city, or within four miles thereof. The jurisdiction of such court to make inquiry in criminal cases shall be the same as that of a justice of the peace. Cases in which the accused is entitled to a jury trial, shall be so tried, unless a jury be waived."

It is evident that the jurisdiction of police courts is very similar to that of mayors. It therefore must be concluded that a mayor's court and a police court have final jurisdiction in misdemeanors.

Section 12372 G. C. provides:

"Offenses which may be punished by death, or by imprisonment in the penitentiary, are felonies; all other offenses are misdemeanors."

"Preceding sections" as used in the section you quote, refers to sections 12603 to 12628-1, inclusive. In applying the definition of the statute above quoted as to what constitutes a felony and a misdemeanor, respectively, it would seem that the offenses defined in the sections to which you refer are misdemeanors. You are therefore advised that in prosecutions under said sections, mayors' courts and police courts have final jurisdiction.

Respectfully,

JOHN G. PRICE,
Attorney-General.