

and by which there are leased and demised to the State of Ohio, acting through you as Director of the Department of Public Works, certain premises for the use of the Division of Aid for the Aged of the Department of Public Welfare.

By this lease, which is one for a term of one year commencing on the 1st day of January, 1938, and ending on the 31st day of December, 1938, and which provides for an annual rental of \$240.00 payable in monthly installments of \$20.00 each, there are leased and demised to the state for the use of the Division of Aid for the Aged two office rooms with toilet connected on second floor of "Ivins Building" on the north side of Mulberry Street in Lebanon, Ohio.

This lease has been properly executed by Howard W. Ivins, the lessor. I likewise find that this lease and the provisions thereof are in proper form.

The lease is accompanied by contract encumbrance record No. 3 which has been executed in proper form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rentals under this lease for the months of January and February, 1938. This is a sufficient compliance with the provisions of Section 2288-2, General Code. This lease is accordingly approved by me and the same is herewith returned to you.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1791.

JUSTICE OF THE PEACE—JURISDICTION—EXCEPTIONS
ENUMERATED IN SECTION 13422-2 G. C.—WHERE AF-
FIDAVIT OR COMPLAINT FILED CHARGING MISDE-
MEANOR IN TOWNSHIP—SITUS—MUNICIPAL COURT
EXERCISING COUNTY WIDE JURISDICTION—STATE
HIGHWAY PATROLMAN—AUTHORIZED REPRESENTATIVE OF STATE DEPARTMENT.

SYLLABUS:

1. *A justice of the peace (excepting in those eighteen special enumerated cases contained in Section 13422-2 of the General Code), upon the filing of an affidavit or complaint by a prosecuting attorney or upon affidavit or complaint made by a sheriff, the party injured, or any authorized representative of a state or federal department charging the commis-*

sion of a misdemeanor committed in a township other than where the affidavit was filed or made, assumes by virtue of Section 13422-2 of the General Code, county-wide jurisdiction to hear and determine the case in the manner prescribed by law, provided, however, there is not existent in the county where such justice of the peace is elected and resides a municipal court exercising county-wide jurisdiction.

2. In matters involving a violation of law relating to the eighteen special enumerated cases contained in Section 13422-2 of the General Code, a justice of the peace has county-wide jurisdiction to hear and determine such cases in the manner provided by law, excepting in those counties throughout the state wherein has been established a municipal court which by the provisions of the act establishing such court the criminal jurisdiction of justices of the peace within that county is expressly limited to the township in which such justices are elected and wherein they reside.

3. Under Section 1181-2 of the General Code, the State Highway Patrol is created as a division of the State Highway Department. Consequently, a state highway patrolman comes within a purview of Section 13422-2 of the General Code as being an authorized representative of a state department.

COLUMBUS, OHIO, January 20, 1938.

HON. LESTER S. REID, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR: This is to acknowledge receipt of your communication which reads as follows:

“Under Senate Bill number 367 passed by the General Assembly, which Bill is an amendment to Section 13422-2 and 13422-3 of the General Code, relative to the jurisdiction of Justices of the Peace, I would like your opinion relative to the following:

Assume a complaint is filed by a party injured, or any authorized representative of a State Department, in a township, charging the commission of a misdemeanor committed in a Township other than where the complaint has been filed in said County.

By virtue of said sections, I am of the opinion that if there is a Justice of the Peace in the Township where said offense is alleged to be committed, then the Justice of the Peace before whom such complaint has been filed, does not have jurisdiction to hear and determine said cause.

Kindly advise me whether or not this is the correct interpretation of the limits on county-wide jurisdiction of Justices of the Peace.

Also, I would like to know whether or not Highway Patrolmen come within the purvie wof this statute as being authorized representatives of a State Department.

Any additional interpretations of these sections which you deem of interest to Prosecuting Attorneys would likewise be appreciated by the writer."

Section 13422-2, General Code, reads as follows:

"A justice of the peace shall be a conservator of the peace and have jurisdiction in criminal cases throughout the township in which he is elected and where he resides, and county wide jurisdiction in all criminal matters only upon affidavit or complaint filed by the prosecuting attorney or upon affidavit or complaint made by the sheriff, the party injured or any authorized representative of a state or federal department, in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court or mayor's court, and on view or on sworn complaint, to cause a person, charged as aforesaid 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 may also hear complaints of the peace and issue search warrants. Provided that justices of the peace shall have county wide jurisdiction on sworn complaint to issue a warrant for the arrest of a person charged with the commission of a felony where it is made to appear that such person has fled or is without the state and it is necessary or desirable to extradite such person. 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:

1. Adulteration or deception in the sale of dairy products and other food, drink, drugs and medicines;
2. The prevention of cruelty to animals and children;
3. The abandonment, non-support or ill treatment of a child by its parents;
4. The abandonment or ill treatment of a child under sixteen years of age by its guardian;
5. The employment of a child under fourteen years of age in public exhibitions or vocations injurious to health,

life, morals, or which will cause or permit it to suffer unnecessary physical or mental pain;

6. The regulation, restriction or prohibition of the employment of females and minors;

7. The torturing, unlawfully punishing, ill-treating, or depriving anyone of necessary food, clothing, or shelter;

8. Any violation of the liquor control act, or keeping a place where intoxicating liquor is sold, given away or furnished in violation of any law prohibiting such acts;

9. The shipping, selling, using, permitting the use of, branding or having unlawful quantities of illuminating oil for or in a mine;

10. The sale, shipment or adulteration of commercial feed stuffs;

11. The use of dust creating machinery in workshops and factories;

12. The conducting of a pharmacy, or retail drug or chemical store, or the dispensing or selling of drugs, chemicals, poisons or pharmaceutical preparations therein;

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;

14. Offenses for violation of laws relating to inspection of steam boilers, and of laws licensing steam engineers and boiler operators;

15. The prevention of short weighing and measuring and all violations of the weights and measures laws;

16. The violation of any law relating to the practice of medicine or surgery, or any of its branches;

17. The violation of any law relating to the filling or refilling of registered containers by other than the owner, or the defacing of the marks of ownership;

18. Offenses arising from or growing out of the violation of conservation laws."

In the enactment of the above quoted section, the Legislature has conferred upon justices of the peace jurisdiction in criminal cases throughout the township in which they are elected and wherein they reside, and county-wide jurisdiction in all cases that arise upon the

filing of an affidavit or complaint by a prosecuting attorney, or upon affidavit or complaint made by a sheriff, the party injured or any authorized representative of a state or federal department. Such county-wide criminal jurisdiction of a justice of the peace is only abridged in those counties wherein it appears that a court other than the common pleas, police or mayor's court, has been established vested with concurrent jurisdiction.

By excepting as courts of concurrent jurisdiction, the common pleas, police or mayor's courts, it is apparent that under our present judicial system the only other court which might be established vested with jurisdiction coextensive with a justice of the peace in criminal matters would be in the event of the establishment within the various counties of the state of municipal courts. Thus whenever the county-wide jurisdiction of a justice of the peace is raised in any case, the paramount fact to be established and which must of necessity be established before the issue can properly be determined, is the existence within that county of a municipal court vested with concurrent jurisdiction. If in the event it is determined that a municipal court has been established within a county vested with criminal jurisdiction coextensive with the jurisdiction of a justice of the peace, then it necessarily follows that the criminal jurisdiction of all justices within that county is limited to the township in which each has been elected and wherein each resides. If on the other hand it appears that a municipal court has not been established within a county or if established and not vested with county-wide jurisdiction, then it is equally true that all justices within that county under the provisions of Section 13422-2, *supra*, are vested with county-wide jurisdiction.

It should be here noted that the foregoing discussion relative to the county-wide criminal jurisdiction of justices of the peace has application only to the general provisions contained in Section 13422-2, *supra*, and in no event should be construed as being determinative of any question that might arise as to the county-wide criminal jurisdiction of justices in those eighteen special cases enumerated in the latter part of the section.

With reference to the county-wide jurisdiction of justices of the peace in this respect, the following observation should be made.

The Legislature in the enactment of many laws has frequently limited or restricted the application of the general provisions of a statute by the introduction therein of an exemption, exception or proviso.

An examination of Section 13422-2, *supra*, discloses that the Legislature in the enactment of said section specifically limited the

county-wide jurisdiction of justices to those cases that arise upon the filing or making of an affidavit or complaint by any of the parties therein designated and only in the event there is no other court vested with concurrent jurisdiction than the common pleas, police or mayor's court. However, in the latter part of the section, the Legislature by the introduction of the proviso unqualifiedly conferred upon justices of the peace county-wide jurisdiction in all cases of violation of law relating to the eighteen special cases therein enumerated. Consequently, it becomes necessary in order to properly determine the question here considered, to reach a conclusion as to the effect that should be given to this proviso and in so doing, your attention is directed to 37 O. Jur., pages 784 and 785, wherein it is stated:

“A proviso has been defined as ‘a clause added to the statute or a section or part thereof, which introduces a condition or limitation upon the operation of the enactment, or makes special provision for cases excepted from the general provisions of the law, or qualifies or restrains its generality or excludes some possible ground of misinterpretation of its extent.’ A proviso is generally used in a statute *to qualify, limit, or restrain the operation of general terms contained in a previous part of the section or act, or to except or exempt certain specified acts or persons from the operation of the general provisions of the statute.*” (Italics, the writer's).

It is apparent that in applying the foregoing rule of statutory construction to the proviso, as contained in section 13422-2, *supra*, the conclusion is inescapable that it was the intent and purpose of the Legislature in its enactment, to except from the general provisions of the section (relating to the conditions and circumstances under which justices of the peace assume county-wide criminal jurisdiction) those eighteen special enumerated cases as herein contained. However, one further observation should be made which in effect tends to qualify the conclusion heretofore reached relative to the county-wide jurisdiction of justices of the peace in cases involving the violations of law relating to the adulteration or deception in the sale of dairy products, food, drinks, drugs, medicines, and other cases as set forth in Section 13422-2, *supra*.

The Supreme Court of Ohio, in the case of Application of George Hesse for Writ of Habeas Corpus, 93 O. S. 230, had under consideration the provisions of Section 13422 of the General Code, as amended in 103 O. L. 539, and which related to the county-wide jurisdiction of justices in cases involving violations of law relating to the adul-

teration and deception in the sale of dairy products, etc. In order to obtain the full import of the decision rendered in the Hesse case, supra, it is deemed advisable to set forth briefly the facts of this case. George Hesse, a citizen of Cincinnati Township, Hamilton County, Ohio, was arrested in that township. The misdemeanor for which he was arrested was cruelty to animals and was alleged to have been committed in Cincinnati Township. The affidavit for the warrant under which he was arrested was filed with the justice of the peace in and for Mill Creek Township, by whom the warrant was issued. Hesse thereupon filed a petition in the Court of Common Pleas of Hamilton County, for a writ of habeas corpus, charging he was illegally restrained and deprived of his liberty without any legal authority by the constable. Upon hearing of the case, the court found in favor of the petitioner who was discharged from custody upon the ground that the justice of the peace had no authority to issue the warrant for arrest and no jurisdiction over the alleged offense. This judgment was affirmed by the Court of Appeals.

The facts of this case further show that Section 41 of the Municipal Court Code of Cincinnati (103 O. L. 279) filed with the Secretary of State, May 2, 1913, effective ninety days thereafter, limited the criminal jurisdiction of justices of the peace in Hamilton County to their own respective townships. The statement of facts further shows that on May 9, 1913, there was filed with the Secretary of State an act (103 O. L. 539) amending Section 13423 of the General Code, effective ninety days thereafter, which act gave justices of the peace county-wide jurisdiction in various enumerated classes of cases therein contained.

An examination of Section 13423 of the General Code, as the same existed at the time of the rendition of the decision in the Hesse case, supra, discloses that the provisions thereof contained substantially the same list of special cases as those set forth in Section 13422-2, supra.

The court in passing upon the questions presented for consideration, held as is disclosed by the syllabus:

“Section 41 (Section 1558-41, General Code) of the act establishing a municipal court in the city of Cincinnati, limiting the jurisdiction of a justice of the peace in any township of Hamilton County other than Cincinnati township in criminal matters, was not repealed by the act passed April 28, 1913 (103 O. L. 539), amending Section 13423, General Code.”

The reasoning upon which the foregoing conclusion is reached is stated on pages 233, 234 and 235 of the opinion, as follows: *

“It is the contention of counsel for respondent that this section, as amended (referring to Section 13423, G. C.), takes precedence over and repeals the provisions of the municipal court act in so far as they are in conflict with the section as amended; that the provisions of the municipal court act denying to a justice of the peace outside of Cincinnati township in Hamilton County jurisdiction over offenses committed in Cincinnati township, are therefore repealed, and that these justices of the peace have concurrent jurisdiction, at least, with the municipal court.

It is settled that where there are contradictory provisions in statutes and both are susceptible of a reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation.

* * *

We conclude, therefore, that Section 41 of the municipal court act has not been repealed, but is in full force and effect, and that the justice of the peace in the case at bar had no jurisdiction to issue a warrant for the arrest of the petitioner nor jurisdiction over the alleged offense.” (Words in parentheses, the writer’s.)

It is apparent that the foregoing decision dispels any doubt that might exist as to whether the provisions of Section 13422-2, General Code, repeal by implication any municipal court act, the provisions of which are found to be in conflict therewith.

Consequently, it is my opinion that the county-wide jurisdiction of justices of the peace involving violations of law relating to any of the special cases enumerated in Section 13422-2, supra, is not abridged or qualified by the general provisions of the section (relating to the conditions and circumstances under which justices of the peace have county-wide criminal jurisdiction) unless it is shown that the Legislature in creating a municipal court within a county has by the express provisions of the act creating such court, limited the criminal jurisdiction of all justices within that county to the township wherein they were elected and wherein they reside.

Coming now to a consideration of the last question contained in your request as to whether or not a highway patrolman is an authorized representative of a state department, your attention is directed to the provisions of Section 1181-2 of the General Code, which I believe to be dispositive of this question. This section reads in part as follows:

“There is hereby created in the department of highways a division of state highway patrol which shall be administered by a superintendent of state highway patrol hereinafter referred to in this act as the superintendent.”

It is obvious that by virtue of the foregoing provisions the State Highway Patrol is created within and is an integral part of the State Highway Department. Consequently, the conclusion is so obvious as to be inescapable that a state highway patrolman is an authorized representative of a state department.

Summarizing, and in specific answer to the questions presented by your inquiry, it is my opinion:

1. A justice of the peace (excepting in those eighteen special enumerated cases contained in Section 13422-2 of the General Code), upon the filing of an affidavit or complaint by a prosecuting attorney or upon affidavit or complaint made by a sheriff, the party injured, or any authorized representative of a state or federal department charging the commission of a misdemeanor committed in a township other than where the affidavit was filed or made, assumes by virtue of Section 13422-2 of the General Code, county-wide jurisdiction to hear and determine the case in the manner prescribed by law, provided, however, there is not existent in the county where such justice of the peace is elected and resides a municipal court exercising county-wide jurisdiction.

2. In matters involving a violation of law relating to the eighteen special enumerated cases contained in Section 13422-2 of the General Code, a justice of the peace has county-wide jurisdiction to hear and determine such cases in the manner provided by law, excepting in those counties throughout the state wherein has been established a municipal court which by the provisions of the act establishing such court the criminal jurisdiction of justices of the peace within that county is expressly limited to the township in which such justices are elected and wherein they reside.

3. Under Section 1181-2 of the General Code, the State Highway Patrol is created as a division of the State Highway Department. Consequently, a state highway patrolman comes within the purview

of Section 13422-2 of the General Code as being an authorized representative of a state department.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1792.

APPROVAL—LEASE TO STATE OF OHIO THROUGH DEPARTMENT OF PUBLIC WORKS, CERTAIN PREMISES BY DR. C. F. SHONK, TERM ONE YEAR, ANNUAL RENTAL \$360.00, 53 SOUTH MARKET STREET, LOGAN, OHIO, FOR USE DIVISION OF AID FOR THE AGED, DEPARTMENT OF PUBLIC WELFARE.

COLUMBUS, OHIO, January 20, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by Dr. C. F. Shonk of Logan, Ohio, in and by which there are leased and demised to the State of Ohio, acting through you as Director of the Department of Public Works, certain premises for the use of the Division of Aid for the Aged of the Department of Public Welfare.

By this lease, which is one commencing on December 20, 1937, and ending on December 31, 1938, and which provides for an annual rental of \$360.00 payable in monthly installments of \$30.00 each, there are leased and demised to the state for the use of the Division of Aid for the Aged four rooms on lower floor, facing Worthington Park and identified as number 53 South Market Street in said city of Logan, Ohio, and on the northeast corner of Lot Sixty-Nine in said city.

This lease has been properly executed by Dr. C. F. Shonk, the lessor. I likewise find that this lease and the provisions thereof are in proper form.

The lease is accompanied by contract encumbrance record No. 5 which has been executed in proper form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rentals under this lease for the months of