

1858

WHERE MAGISTRATE IS REQUIRED TO CERTIFY CASE INVOLVING VIOLATION OF LOCAL ORDINANCE TO A COURT OF RECORD IN COUNTY—CASE MAY BE CERTIFIED TO COURT OF COMMON PLEAS OR ANY MUNICIPAL COURT IN COUNTY—JURISDICTION TO HEAR CASE—§§2937.08, 2938.04., Revised Code O.A.G. No. 1548 FOR 1960.

## SYLLABUS:

1. Where pursuant to Sections 2337.08 and 2938.04, Revised Code, a magistrate is required to certify a case involving violation of a local ordinance to a court of record in the county, such case may be certified to the court of common pleas of the county or to any municipal court in the county.
2. Where such a case is so certified to the court of common pleas, the court has jurisdiction to hear the case.
3. In a county which has no municipal court such cases should be certified to the court of common pleas of the county.

Columbus, Ohio, November 28, 1960

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

Dear Sir:

Your request for my opinion reads as follows:

“The 103rd General Assembly enacted various changes in the jurisdiction and procedure to be followed by mayors’ courts in the state. Several questions as to the interpretation of these new provisions have been answered by your office in recent months. However, an additional question has been raised by municipal officials who have asked that this office request your formal opinion on the point.

“Many municipalities of the state have enacted criminal ordinances which provide a possible penalty in excess of \$50.00. Under R.C. 2945.17 an accused has the right to be tried by a jury at any trial, in any court, for the violation of any ordinance of any municipal corporation where the penalty can exceed \$50.00.

“1960 OAG No. 1208, rendered on March 24, established in paragraph 2 of the syllabus, the following rule:

'2. A mayor's court of a village is not a court of record and under the provisions of Section 2938.04, Revised Code, in a prosecution in such court for violation of an ordinance where the accused is entitled to trial by jury and does not waive such right, the mayor is required to certify the case to a court of record.'

"This rule was further elaborated in 1960 OAG No. 1548, rendered on July 12. The third paragraph of the syllabus in that opinion reads as follows :

'3. Where pursuant to Section 2937.08, Revised Code, a judge of a county court is required to certify a case to a court of record, he may certify the case to the court of common pleas, or, under Section 2938.10, Revised Code, to any municipal court in the county regardless of its territorial jurisdiction.'

"Since the rule in the latter opinion is based upon the provisions of R.C. 2937.08, relative to all courts which are not of record, it appears that it applies equally to mayors' courts, as well as county courts which are specifically mentioned in the opinion. Thus Opinion No. 1548 might be interpreted as stating that where a mayor is required by R.C. 2937.08 to certify a case to a court of record, he may certify the case to the court of common pleas, or to any municipal court in the county.

"Here it should be pointed out that the Legislature has not established municipal courts in every county of the state. At the present time, more than one-third of the counties in the state do not have municipal courts. In these counties it appears that, under the present state of the law, the only court of record which is available for transfer of jury trial cases from inferior courts is the common pleas court of the county.

"This situation was recognized and considered generally in 1959 OAG No. 648, rendered July 1, 1959. The syllabus in that opinion reads as follows :

"It is not the duty of the prosecuting attorney of a county to prosecute cases involving violations of village ordinances prosecuted in the name of the village and for the benefit of the village, that are transferred from the mayor's court to the Common Pleas Court under the authority of Section 1905.13 of the Revised Code, and legal counsel provided by the village should conduct such prosecutions.'

"At the time of this opinion a mayor's court was authorized by R.C. 1905.13 to certify to a court of common pleas any case arising under a village ordinance, where the accused has not waived a right to jury trial. The statute which was

relied upon contained a positive grant, to the court of common pleas, of jurisdiction over ordinance cases which were transferred from the court of a village mayor. However, this section of the Revised Code was repealed by the 103rd General Assembly in Senate Bill 73, effective January 1, 1960; and no comparable positive grant of jurisdiction, to the court of common pleas in such ordinance cases, appears to have been re-enacted by the General Assembly.

"Article IV, Section 4, of the Ohio Constitution provides that the jurisdiction of the courts of common pleas, and the judges thereof, shall be fixed by law.

"State v. McGehan, 27 O.S. (1910) quotes on page 282, Stevens v. State, 3 O.S. 453, as holding that:

'The Constitution confers no jurisdiction whatever upon the Court of Common Pleas either in civil or criminal cases. It is made capable of receiving jurisdiction in all cases, but can exercise none until conferred by law.'

"In view of these facts and references, the specific question on which we solicit your formal opinion is as follows:

"Where a person is accused in a mayor's court, under a municipal ordinance which provides for a fine in excess of \$50.00, and fails to waive his right to a jury trial, to what court is the mayor required to certify the case, in a county where no municipal court has been established?"

Since the question here presented is primarily concerned with the criminal jurisdiction of the court of common pleas, it would appear advisable to review the general constitutional and statutory provisions pertinent thereto.

In 14 Ohio Jurisprudence 2d, Section 166, page 584, it is stated:

"The Courts of Common Pleas are the constitutional courts of general original jurisdiction in Ohio, but they are capable of exercising only such jurisdiction as is conferred by the legislature. The Constitution itself confers no jurisdiction whatever upon the Common Pleas Court, either in civil or criminal cases, but merely gives that court capacity to receive jurisdiction which shall be fixed by law. The Constitution declares that the jurisdiction of the Courts of Common Pleas, and of the judges thereof shall be fixed by law. This constitutional provision is not self-executing, but must be enforced by appropriate legislation, and in this sense, therefore, the jurisdiction of the Common Pleas Court can be said to be statutory."

As to the criminal jurisdiction of the court of common pleas, Section 2931.03, Revised Code, provides:

“The court of common pleas has original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas.”

Referring to the provisions of that section (then Section 13422-5, General Code) the first headnote of the case of *State v. Carpenter*, 87 Ohio App., 247, reads:

“1. The phrase ‘minor offenses’ in Section 13422-5, General Code, is used in the sense of ‘misdemeanor.’”

While a misdemeanor is generally thought of as a violation of state law, a violation of an ordinance may be made a misdemeanor. In this regard, Section 715.67, Revised Code, provides:

“Any municipal corporation may make the violation of any of its ordinances a misdemeanor, and provide for the punishment thereof by fine or imprisonment, or both. \* \* \*”

Thus, it might be argued that the jurisdictional grant of Section 2931.03, *supra*, in cases of minor offenses, applies to ordinances the violations of which have been made misdemeanors.

On the other hand, former Section 1905.13, Revised Code, to which you refer, contained a specific grant of jurisdiction to the court of common pleas where a major of a village declined to conduct a jury trial in an ordinance case and referred the case to said court pursuant to the section. Said Section 1905.13, until its repeal in 1960 (128 Ohio Laws, 116), read as follows:

“The mayor of a village may decline to permit the trial mentioned in Section 1905.12 of the Revised Code, if in his opinion the public interest will be promoted. Having entered that fact on his docket, the mayor shall inquire into the complaint, and discharge the accused, recognize him to the court of common pleas, or commit him in default of bail, and in such case the court of common pleas shall have jurisdiction of the offense.”

The fact that the legislature in this instance specifically stated that “the court of common pleas shall have jurisdiction of the offense” might be construed to mean that the court of common pleas was deemed not to be granted jurisdiction over ordinance cases under Section 2931.03, *supra*.

While there is thus some question as to the grant of jurisdiction under Section 2931.03, *supra*, I do not deem it necessary to further treat

this aspect in my consideration of the instant matter as I am of the opinion that it was the intent of the legislature in enacting Amended Substitute Senate Bill No. 73 of the 103rd General Assembly to grant jurisdiction in certain ordinance cases to the court of common pleas. Said bill enacted Section 2937.08, Revised Code, reading :

“Upon a plea of not guilty or a plea of once in jeopardy, if the charge be a misdemeanor in a court of record, the court shall proceed to set the matter for trial at a future time, pursuant to Chapter 2938. of the Revised Code, and shall let accused to bail pending such trial. Or he may, but only if both prosecutor and accused expressly consent, set the matter for trial forthwith.

“Upon the entry of such pleas to a charge of misdemeanor in a court not of record, the magistrate shall forthwith set the matter for future trial or, with the consent of both state and defendant may set trial forthwith, both pursuant to Chapter 2938. of the Revised Code, provided that if the nature of the offense is such that right to jury trial exists, such matter shall not be tried before him unless the accused, by writing subscribed by him, waives a jury and consents to be tried by the magistrate.

“If the defendant in such event does not waive right to jury trial, then the magistrate shall require the accused to enter into recognizance to appear before court of record in the county, set by such magistrate, and the magistrate shall thereupon certify all papers filed, together with transcript of proceedings and accrued costs to date, and such recognizance if given, to such designated court of record. Such transfer shall not require the filing of indictment or information and trial shall proceed in the transferee court pursuant to Chapter 2938. of the Revised Code.”

The bill also enacted Section 2938.04, Revised Code, providing :

“\* \* \* In courts not of record jury trial may not be had, but failure to waive jury in writing where right to jury trial may be asserted shall require the magistrate to certify such case to a court of record as provided in section 2937.08 of the Revised Code.”

A mayor's court is not a court of record and a mayor is a magistrate. He may hear cases involving violations of ordinances of the municipal corporation (Sections 1905.01 and 1905.09, Revised Code) but where the accused is entitled to trial by jury and does not waive such right, he is required to certify the case to a court of record in the county (Opinion No. 1208, Opinions of the Attorney General for 1960, issued on March 24, 1960).

The intent of Sections 2937.08 and 2938.04, *supra*, appears clear. That is, only a court of record may conduct a criminal jury trial and where

an accused does not waive his right to trial by jury the case must be certified to a court of record in the county. Since the court of common pleas is a court of record and is the court of general original jurisdiction in the county, such a case may be certified to a court of common pleas and the jurisdiction of the court to hear an ordinance case so certified may be reasonably implied from the statutes involved (Sections 2937.08 and 2938.04, *supra*).

To hold that a court of common pleas does not have authority to hear a case certified under Section 2937.08, *supra*, would render such section invalid if the court of common pleas were the only available court of record in the county (as in the instant case); and I do not believe that such could have been the intent of the legislature in enacting Senate Bill No. 73, *supra*. 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:

“Statutes are to be given a fair and reasonable construction in conformity to their general object, in order to effectuate such object and purpose, and should not be given such an interpretation as would thwart that purpose. If the words and language are susceptible for 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 662, it is stated:

“In construing a statute, courts frequently refer to the ‘design’ thereof, or to that which is ‘designed’ to be accomplished thereby. 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.”

Accordingly, taking into consideration what I consider to be the intent of the legislature on the question at hand, and in view of the fact

that the court of common pleas is a court of record, I conclude that such court has jurisdiction to hear an ordinance case which has been certified to it by a magistrate under Sections 2937.08 and 2938.04, *supra*. It follows, therefore, that in an ordinance violation case in a mayor's court where the accused is entitled to trial by jury and does not waive such right, the mayor must certify the case to the court of common pleas or to a municipal court in the county; and if there is no municipal court in the county, the case should be certified to the court of common pleas.

I might also note that the rule here expressed would apply to any similar case before any magistrate, and further note that county court judges, police court judges, and mayors are magistrates (Section 2931.01, Revised Code) who have jurisdiction over ordinance cases within their respective territories (See Sections 1901.20 and 1903.06, Revised Code; also, Opinion No. 1185, Opinions of the Attorney General for 1960, issued on March 16, 1960).

In conclusion, therefore, it is my opinion and you are advised:

1. Where pursuant to Sections 2937.08 and 2938.04, Revised Code, a magistrate is required to certify a case involving violation of a local ordinance to a court of record in the county, such case may be certified to the court of common pleas of the county or to any municipal court in the county.

2. Where such a case is so certified to the court of common pleas, the court has jurisdiction to hear the case.

3. In a county which has no municipal court such cases should be certified to the court of common pleas of the county.

Respectfully,

MARK MCELROY

Attorney General