

3154.

APPROVAL, NOTES OF SEAMAN VILLAGE SCHOOL DISTRICT, ADAMS COUNTY, OHIO—\$2,226.00.

COLUMBUS, OHIO, August 31, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3155.

APPROVAL, NOTES OF SALEM TOWNSHIP RURAL SCHOOL DISTRICT, HIGHLAND COUNTY, OHIO—\$2,022.00.

COLUMBUS, OHIO, August 31, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3156.

JUSTICE OF PEACE—NO JURISDICTION TO FINE PERSON ACCUSED OF OPERATING MOTOR VEHICLE WITH DEALER'S LICENSE PLATES CONTRARY TO SECTION 12618-2, G. C., WHEN.

SYLLABUS:

If a person arrested for operating a motor vehicle with dealer's license plates in violation of section 12618-2 of the General Code is brought before a justice of the peace, and in writing waives a jury, such justice of the peace would have no jurisdiction to fine said person, whether a plea of guilty or not guilty was entered to the charge.

COLUMBUS, OHIO, September 1, 1934.

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

DEAR SIR:—This will acknowledge receipt of your recent communication which reads as follows:

"I herewith desire an opinion on the following set of facts:

'A' was arrested for operating a motor vehicle with dealer's license plates in violation of 12618-2 of the General Code of Ohio. A jury waiver was signed by the accused before a justice of the peace and he entered a plea of guilty as charged.

The question I desire to have specifically answered is whether under such set of facts the justice of the peace had jurisdiction to fine said defendant? The reason for this question arises by virtue of the case of *Overholser vs. Wolf, Sheriff*, reported in Volume 26, O. N. P. (N. S.) at

Page 593. In that case it states that the law is that the justice has final jurisdiction *where the accused is entitled to a jury trial*. In the particular case at bar and for future cases, it has been urged by counsel for the defendant, who was employed after the judgment was rendered, that the justice of the peace had no final jurisdiction for the reason that the defendant was not entitled to a jury trial.

Would any different rule exist whether the accused plead guilty and signed a jury waiver or plead not guilty and signed a jury waiver and upon trial was found guilty?"

Section 12618-2 of the General Code reads as follows:

"Whoever operates or drives a motor vehicle upon the highways of this state displaying thereon a distinctive number or identification mark belonging to a manufacturer or dealer, when such motor vehicle is not held by such manufacturer or dealer exclusively for sale, lease or other like disposition shall be fined twenty-five dollars, and for a subsequent offense shall be fined not less than fifty dollars nor more than five hundred dollars or imprisoned for sixty days, or both."

Generally, the criminal jurisdiction of a justice of the peace, as to misdemeanors as well as felonies, is limited to examining the accused and determining whether or not an offense has been committed and whether there is probable cause for binding him over to a court of competent jurisdiction for trial. *Sprague vs. The State*, 34 O. App. 354, and *State, ex rel. Overholster, vs. Wolf*, 26 O. N. P. (N. S.) 593. Unless the offense is one of those of which a justice of the peace is given final jurisdiction by statute, his jurisdiction is confined to that of an examining magistrate, or disposing of the case as provided in other sections of the General Code. *State, ex rel. Hilt, vs. Renz*, 5 O. App. 421.

Section 13422-2 of the 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 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."

Section 13422-3 of the General Code confers on justices of the peace final jurisdiction in certain classes of misdemeanors.

The above sections should be read in conjunction with sections 13433-9 and 13433-10 of the General Code, which read as follows:

Sec. 13433-9. "When a person charged with a misdemeanor is brought before a magistrate on complain 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. If the complaint is not made by the party injured and the accused pleads guilty, the magistrate shall require the accused to enter into a recognizance to appear before the proper court as provided when there is no plea of guilty."

Sec. 13433-10. "When the accused is brought before the magistrate and there is no plea of guilty, he shall inquire into the complaint in the presence of such accused. If it appear that an offense has been committed, and there is probable cause to believe the accused guilty, he shall order him to enter into a recognizance with good and sufficient surety, in such amount as he deems reasonable, for his appearance at a proper time and before the proper court, otherwise, he shall discharge him from custody, if the offense charged is a misdemeanor, and the accused in a writing subscribed by him and filed before or during the examination, waive a jury and submit to be tried by the magistrate, he may render final judgment."

By section 13433-9 of the General Code 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 section 13433-10 of the General Code 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 of the peace may either discharge or bind over unless the case should come within the exceptions above mentioned or unless final jurisdiction is conferred by special legislation.

Section 13443 of the General Code, which provides for trial by jury, reads as follows:

"At any trial, in any court, for the violation of any statute of the state of Ohio, or of any ordinance of any municipality, except in cases where the penalty involved does not exceed a fine of fifty dollars, the accused shall be entitled to be tried by a jury drawn in the manner prescribed by law for the selection of jurors."

In the instant case, "A" was not entitled to the right of trial by jury, inasmuch as the maximum penalty for a violation of section 12618-2 of the General Code is twenty-five dollars.

The second paragraph of the syllabus of the case of *State, ex rel. Overholser, vs. Wolf*, 26 O. N. P. (N. S.) 593, reads as follows:

"A waiver of a right which does not exist is a nullity, and where a defendant is not entitled to a jury trial by reason of the fact that a fine constitutes the whole punishment of the offense charged, the waiver of a jury is wholly ineffectual to confer final jurisdiction on an examining court."

Applying the provisions of the pertinent statutes, it would therefore appear that a justice of the peace has final jurisdiction when specifically granted by statute, or when a person charged with a misdemeanor is brought before the justice of the peace on complaint of the party injured, and pleads guilty thereto, or when the offense charged is a misdemeanor and the accused is entitled to a jury

trial and in writing waives a jury and submits to be tried by the justice of the peace. Therefore, in the instant case, the justice of the peace did not have final jurisdiction for the following reasons:

1. The motor vehicle act does not confer final jurisdiction on justices of the peace over prosecutions for the violation of its provisions nor is the offense in question enumerated in section 13422-3, General Code.

2. The accused was not brought before the justice of the peace on complaint of the party injured.

3. The penalty for the offense charged does not exceed a fine of fifty dollars and the accused would not be entitled to a jury trial and, consequently, could not waive a jury.

If, however, the party injured files the affidavit and the accused pleads guilty, the justice of the peace has final jurisdiction, or if the misdemeanor charged carries as a penalty a fine in excess of fifty dollars, as a subsequent offense under section 12618-2 of the General Code does, then the accused is entitled to a jury trial, and if he waives that right, as provided by section 13433-10 of the General Code, he gives the justice of the peace final jurisdiction.

Therefore, in specific answer to your question, I am of the opinion that if a person arrested for operating a motor vehicle with dealer's license plates in violation of section 12618-2 of the General Code is brought before a justice of the peace, and in writing waives a jury, such justice of the peace would have no jurisdiction to fine said person, whether a plea of guilty or not guilty was entered to the charge.

Respectfully,

JOHN W. BRICKER,

Attorney General.

3157.

APPROVAL, LEASE OF ABANDONED HOCKING CANAL LANDS IN THE CITY OF NELSONVILLE, TO THE CITY OF NELSONVILLE, OHIO.

COLUMBUS, OHIO, September 1, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease executed by you in your official capacity as Superintendent of Public Works and as Director of said department, to the City of Nelsonville, Ohio, in and by which there is leased and demised to said city for the stated term of fifteen years four certain tracts or parcels of abandoned Hocking Canal lands in the City of Nelsonville, which parcels of land are more particularly described in the lease instrument.

The question of the authority of the Superintendent of Public Works to execute this lease on the terms therein provided, is one that has given me some difficulty. Inasmuch as the City of Nelsonville, by its failure to act under the provisions of Senate Bill No. 214 enacted by the 89th General Assembly, 114 O. L. 554, the same being an act to authorize the City of Nelsonville to enter upon, improve and occupy a portion of the Hocking Canal for street, sewerage