"Moreover the action against the Combined Normal and Industrial Department of Wilberforce University cannot be maintained, for it is an action against the state."

That was a case in which suit was instituted against said Board of Trustees and Wilberforce University for damages, which the plaintiff claimed to have sustained as the result of falling into a manhole on the property owned by the State and under the control of said Board of Trustees. A judgment had been rendered in the Common Pleas Court against said Board of Trustees and Wilberforce University, which judgment was affirmed by the Court of Appeals. This judgment, however, was reversed by the Supreme Court in the case herein cited, for the reason hereinabove quoted.

Section 4 of Article XV of the Constitution of Ohio, provides that:

"No person shall be elected or appointed to any office in this state unless possessed of the qualifications of an elector; provided that women who are citizens may be appointed as members of boards of, or to positions in, those departments and institutions established by the state or any political subdivision thereof involving the interests or care of women or children or both."

It will be noted that this section of the Constitution specifically provides that no person shall be appointed to any office in this State unless possessed of the qualifications "of an elector." It is true that it does not state that such person must be an elector of the State of Ohio, but there can be no doubt but that such was the intent of the people in adopting said section. There can be no doubt but that this section applies to appointments to be made upon the various state boards, and that such members are officers within the meaning of said constitutional provision for the reason that the latter part of the section refers specifically thereto, and authorizes the appointment of women who were not at the time said section was amended (November 4, 1913) electors of this State, as members of boards of departments and institutions "established by the state or any political subdivision thereof which involved the interests and care of women or children, or both." There is, therefore, a clear constitutional prohibition against the appointment to any such office in this State of any person who is not an elector of the State. Since Bishop Heard, who was selected by the Board of Trustees of Wilberforce University to become a member of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University, does not possess the qualifications of an elector, he may not qualify or act as a member of said Board of Trustees.

From what has been said, it is my opinion that since all of the members of the Board of Trustees of the Combined Normal and Industrial Department of Wilberforce University must be electors of the State of Ohio, Bishop Heard is not legally eligible to serve as a member of such board.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2599.

PROHIBITION VIOLATORS—PROBATE COURT HAS JURISDICTION OF—AFFIDAVIT.

SYLLABUS:

By the terms of Section 6212-18, *General Code, it is unnecessary that any information be first filed by the prosecuting attorney in order to vest jurisdiction in a probate court to hear and determine prosecutions involving violations of the prohibition laws.*

COLUMBUS, OHIO, September 21, 1928.

HON. W. W. BADGER, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—This will acknowledge your letter dated September 14, 1928, which reads:

> "Please render your opinion on the following:
>
> Start an action in the name of the State of Ohio in the Probate Court on an affidavit signed by the Sheriff for selling liquor contrary to Section 6212–18, G. C. The defense was the court had no jurisdiction, for according to G. C. 13441 an information had to be filed by the Prosecutor which they claim was supported by a case in Volume 87, page 308 of the Ohio State Reports. I maintain that the liquor laws 6212 et al. were passed since G. C. 13441 and that G. C. 6212–18 gives me authority to file an affidavit by the sheriff in the Probate Court.
>
> Is this correct and what is your opinion?"

Section 13424, General Code, provides:

> "The probate court shall have concurrent jurisdiction with the court of common pleas in all misdemeanors and all proceedings to prevent crime."

Section 13441, General Code, to which you refer, was formerly Section 6455, Revised Statutes, and except for slight changes in its phraseology by the codifying commission in 1910 has not been amended for a great number of years. This section provides:

> "An indictment is not required in cases in which the probate court has criminal jurisdiction. The prosecuting attorney shall forthwith file an information in such court setting forth briefly, in plain and ordinary language, the charges against the accused, and he shall be tried thereon."

On January 27, 1920 (108 v. Part 2, 1182), the Legislature passed an act entitled:

> "An Act—To prohibit the liquor traffic and to provide for the administration and enforcement of such prohibition and repeal certain sections of the General Code."

Section 1 thereof, now Section 6212–13, General Code, reads as follows:

> "This act shall be deemed to be an exercise of power granted in Article XV, Section 9, of the Constitution of Ohio, and the police power of the state and its provisions shall be liberally construed to carry out the provisions of this act."

Section 6 thereof became Section 6212–18, and, as last amended on April 21, 1921 (109 v. 144), in so far as pertinent, provides:

> "Any * * * probate * * * judge within the county with whom the affidavit is filed charging a violation of any of the provisions of this act, when the offense is alleged to have been committed in the county in which such * * * judge may be sitting, shall have final jurisdiction to try such

> cases upon such affidavit without a jury, unless imprisonment is a part of the penalty, but error may be prosecuted to the judgment of such * * * judge as hereinafter provided. And in any such cases where imprisonment is not a part of the penalty, the defendant cannot waive examination or can said * * * judge recognize such defendant to the grand jury; *nor shall it be necessary that any information be filed by the prosecuting attorney or any indictment be found by the grand jury.* * * *"

In its legislation of 1920, it is very evident that the General Assembly was engaged in adopting a system of laws controlling a particular subject, to-wit, legislation prohibiting traffic in intoxicating liquors. In so far as Sections 13424, 13441 and 6212-18, supra, relate to the same subject matter, viz., the jurisdiction and mode of prosecution in cases over which probate courts have jurisdiction, it is evident that the same are *in pari materia* and must be so construed.

It is manifest that the act of 1920 was a general act dealing specifically with the liquor traffic and its prohibition. Sections 13424 and 13441, supra, though special in the sense that they pertain solely to probate courts, apply generally to criminal cases in which such courts have jurisdiction. Since the Legislature in its act of 1920 confined its legislation to the subject of prohibition and enforcement only, it is very evident that its purpose and intent was to segregate from the general statutes certain procedure in order to effectuate the purpose of the act.

Construing these several sections therefore *in pari materia* it is my opinion that the general policy evinced by the Legislature discloses that the provisions of Section 13424 and 13441, supra, requiring the filing of an information in the probate court, were superseded by the later act of 1920, in so far as the prosecution of liquor cases are concerned. Sections 13424 and 13441, supra, contain provisions relating to jurisdiction and procedure in criminal cases in the probate court generally; the act of 1920 relates to a particular subject, to-wit, the jurisdiction and procedure to enforce the prohibition laws.

In the case of *City of Cincinnati* vs. *Holmes*, 56 O. S. 104, Judge Minshall, at page 115, adverts to the following rule of construction in such cases:

> "I know of no rule of construction of statutes of more uniform application than that later or more specific statutes do, as a general rule, supersede former and more general statutes, so far as the new and specific provisions go."

The general rule upon the subject as quoted in 36 Cyc., page 1151, is as follows:

> "Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and different way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute."

Section 6212-18, supra, specifically provides that "nor shall it be necessary that any information be filed by the prosecuting attorney." Obviously, this clause refers to cases which may be instituted in the probate court.

Moreover, your attention is invited to the fact that Section 9 of the act of 1920, the repealing section of that act, provides that "all provisions of law inconsistent with this act are repealed only to the extent of such inconsistency."

It is apparent that the provisions of Section 13441, supra, relating to the procedure incident to the prosecution of criminal cases in the probate court are inconsistent with the later provisions of Section 6212-18, supra. They are in conflict with one another in their respective provisions relating to the necessity of the prosecuting attorney to file an information in such court in this class of criminal cases. Therefore, under the express provisions of the later act of 1920, Section 13441, supra, is repealed to the extent of such inconsistency in so far as it relates to the procedure incident to the prosecution of such cases in the probate court.

In view of the foregoing and answering your question specifically, it is my opinion that by the terms of Section 6212-18, General Code, it is unnecessary that any information be first filed by the prosecuting attorney in order to vest jurisdiction in a probate court to hear and determine prosecutions involving violations of the prohibition laws. I concur in the conclusion reached by you in this regard.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2600.

VEHICLE—DEFINITION OF—DISCUSSION OF VEHICLES IN EXCESS OF TWELVE TONS BEING ALLOWED ON HIGHWAYS—PROSECUTION.

SYLLABUS:

A machine, such as a steam shovel, which is run upon caterpillar tracks or a band containing cleats, is not a vehicle run upon rails or tracks within the meaning of Section 7246, General Code. A person operating a vehicle of the caterpillar type over a public highway, without the consent of the County Surveyor, in the case of county roads, or the Director of Highways, in the case of state highways, in excess of a total weight of twelve tons, including weight of vehicle and load, may be prosecuted under the provisions of Section 13421-17, General Code, for violation of the provisions of Sections 7246 to 7250, inclusive, General Code.

COLUMBUS, OHIO, September 21, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

> "A large steam shovel weighing twenty tons has been moved on our State Highway No. 11 in this County, by The Royal Sand and Clay Products Company, from one of its plants to another, a distance of a mile, more or less. Same is equipped with a caterpillar track twenty-four inches wide, the whole band or track being fourteen feet in length, the cross sections or cleats being about four inches wide.
>
> Section 7246, General Code of Ohio, fixes the maximum weight not in excess of twelve tons permitted on public highway or street, but has a provision as to when same is not applicable, in this language:
>
> 'This provision shall not apply to vehicles run upon *rails or tracks*', etc. (Italics the writer's.)