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MUNICIPAL COURT—CITY WITHIN TOWNSHIP—TERRITORIAL JURISDICTION OF COURT EMBRACES CITY—JUSTICE OF PEACE OF TOWNSHIP—DEPRIVED OF JURISDICTION IN ALL CIVIL AND CRIMINAL CAUSES WITHIN MUNICIPAL CORPORATION—LEGAL JURISDICTION RETAINED OUTSIDE CORPORATE LIMITS OF MUNICIPALITY—SECTION 1901.04 RC.

SYLLABUS:

Where a municipal court has been established in a city which is located within a township, the territorial jurisdiction of which municipal court embraces only the city, a justice of the peace of such township is, under the provisions of Section 1901.04 of the Revised Code, deprived of his jurisdiction in all civil and criminal causes arising within such municipal corporation, but he retains his jurisdiction as provided by law, outside of the corporate limits of such municipal corporation.

Columbus, Ohio, April 4, 1955

Hon. Joseph W. McNerney, Prosecuting Attorney
Muskingum County, Zanesville, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“Your opinion is respectfully requested concerning the jurisdiction of justices of peace in criminal matters within cities wherein there is established a municipal court.

“In Zanesville, Ohio, we have a municipal court whose territorial limits are confined to the corporation of the City of Zanesville, Ohio. Outside the City of Zanesville we have a number of townships that have justices of peace; Falls Township is one of them. The Justice of Peace of Falls Township is now exercising criminal jurisdiction in the City of Zanesville of the offenses enumerated under Section 2931.02 of the Revised Code from ‘A’ to ‘R’ inclusive.

“Section 2931.02 of the Revised Code provides in part:

“A justice of the peace * * * has 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 prose-

cuting 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 court of common pleas, police court or mayor's court, * * *

'Justices of the peace have jurisdiction within their respective counties in all cases of violation of any law relating to:

'(A) Adulteration or deception in the sale of dairy products and other food, drink, drugs, and medicine; * * *

'(R) Offenses arising from or growing out of the violation of conservation laws.'

"Section 1901.04 (Transfer of Pending Actions), second paragraph, provides in part:

'Upon the institution of a municipal court, the jurisdiction of the justices of the peace and police justices in all civil and criminal causes terminates in any township or municipal corporation which is entirely within the territory.'

"My question is whether this county-wide jurisdiction granted a justice of the peace under Sections 2931.02 of the Revised Code, when certain qualified persons bring one of the actions listed by filing an affidavit or complaint, extends into the territorial limits of a municipal court."

Section 2931.02, Revised Code, formerly Section 13422-2, G. C., quoted in your letter, appears to relate in its first paragraph, to the jurisdiction of a justice of the peace in criminal cases generally, and the remainder of the section constitutes, in effect, a proviso or exception to the general rule stated in the first paragraph. In other words, as a general proposition, a justice of the peace has county-wide jurisdiction in criminal matters only in the event there is no court of concurrent jurisdiction other than the court of common pleas, police court, or mayor's court. On the contrary, as to the eighteen subdivisions marked (A) to (R), such justice has, without qualification or condition, county-wide jurisdiction.

Section 13422-2, General Code, has been the subject of several opinions of this department in an effort to clarify the somewhat confused language employed. It was under consideration in Opinion No. 1791, Opinions of the Attorney General for 1938, p. 131, where it is held that the words, "other court of concurrent jurisdiction", could have reference to none other than a municipal court that might have been established, to which has been given concurrent county-wide jurisdiction. In that opinion it was held:

"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."

(Emphasis added.)

The intended meaning of the second syllabus appears to me to be slightly clouded. The doubt may be removed, I think, by eliminating the word which I have italicised—"which"—and substituting the word "and", so that it would read:

"* * * excepting in those counties * * * wherein has been established a municipal court, *and* by the provisions of the act * * * the criminal jurisdiction of justices of the peace is expressly limited. * * *

(Emphasis added.)

The then Attorney General clearly intended to say that in the eighteen cases specified in Section 13422-2, General Code, a justice of the peace has unrestricted county-wide jurisdiction, excepting where a municipal court shall have been established by an act which in terms eliminated or restricted the jurisdiction of such justice.

I do not see that the question which you have presented involves any further consideration of the first paragraph of Section 2931.02, Revised Code. It therefore becomes necessary to examine the statutes whereby a municipal court has been established in the city of Zanesville, to determine to what extent if at all, the jurisdiction of the justice of the peace of

Falls Township, in which the city of Zanesville is situated, has been curtailed.

Section 1901.01, Section 1581, G. C., establishes municipal courts in a large number of cities including Zanesville. The territorial jurisdiction of these courts is set forth in Section 1901.02 of the Revised Code, which provides in part:

“The municipal courts, established by section 1901.01 of the Revised Code, have jurisdiction within the corporate limits of their respective municipal corporations and are courts of record. Each of such courts shall be styled ‘———— municipal court,’ inserting the name of the municipal corporation. The municipal courts also have jurisdiction as follows: * * *”

There follows a series of provisions giving to municipal courts of certain cities, jurisdiction in addition to the territory of the city, over one or more townships in the county. No additional territorial jurisdiction is given to the municipal court of Zanesville. It therefore follows that its territorial jurisdiction is limited to the corporate area of the city.

In Section 1901.04, Revised Code, we find the following provision:

“Upon the institution of a municipal court, the jurisdiction of justices of the peace and police justices in all civil and criminal causes terminates in any township or municipal corporation which is entirely within the territory. *Upon the institution of a municipal court, the jurisdiction of justices of the peace in all civil and criminal causes terminates in that part of any township which is included within the territory.*” (Emphasis added.)

It will be observed that upon the institution of the municipal court the jurisdiction of the justice of the peace in all civil and criminal causes terminates in any township or municipal corporation which is entirely within the territory of the court. Obviously, that situation does not arise in the case of the Zanesville court because the township of Falls is not entirely within the territory of the municipal court. If, however, we observe the second sentence of the paragraph just quoted, we find that it appears to apply directly to the situation existing in the case of the Zanesville court. There it is stated:

“* * * Upon the institution of a municipal court, the jurisdiction of justices of the peace in all civil and criminal causes

terminates in that part of any township which is included within the territory.”

The irresistible conclusion that arises from a reading of that sentence is that the establishment of the Zanesville Municipal Court effectually deprives a justice of the peace of Falls Township of all jurisdiction in civil and criminal causes which arise within the corporate limits of the city of Zanesville. A like situation arose in the case of *Millikan v. Hostetler*, 12 Ohio Op., 428, decided by the Common Pleas Court of Hamilton County. In that case, it was held as shown by the headnote :

“The clear meaning of Section 1558-41, General Code, when read in conjunction with Sections 10223, 10224 and 10225, is that a justice of the peace in Hamilton county has no jurisdiction, even in an attachment suit, against a defendant, resident within the city of Cincinnati, unless he obtains personal service on such defendant within the township for which he was elected and wherein the action has been commenced.”

In the situation existing at that time the Municipal Court of Cincinnati was organized under the provisions of Section 1558-58 of the General Code, which contained a provision reading as follows :

“No justice of the peace in any township in Hamilton County * * * in any proceeding whether civil or criminal, in which any warrant, order of arrest, summons, order of attachment or garnishment, or other process, except subpoena for witnesses, shall have been served upon a citizen or resident of Cincinnati * * * shall have jurisdiction, unless such service be actually made by personal service within the township * * * in which said proceedings may have been instituted. * * *.”

The sections referred to in the headnote above quoted, related to the county-wide authority of a justice of the peace in attachment cases.

While a justice of the peace in the case you present, would thus clearly be stripped of his jurisdiction in all civil and criminal cases arising within the City of Zanesville to the extent at least that he could not issue writs to be served within the City of Zanesville upon residents thereof, he would not be stripped of his jurisdiction in the territory of the township outside said city, or of his county-wide criminal jurisdiction as to the remainder of the county. Furthermore, it would appear from the doctrine of the *Millikan* case, that he could acquire jurisdiction over a resident of the City of Zanesville, provided that service was made outside the city

and within the territory over which the justice retains his jurisdiction. That jurisdiction so retained, as to civil cases, would appear to be within the remnant of his own township, and as to criminal cases, within the remnant of the county.

Accordingly, in specific answer to your question it is my opinion that where a municipal court has been established in a city which is located within a township, the territorial jurisdiction of which municipal court embraces only the city, a justice of the peace of such township is, under the provisions of Section 1901.04 of the Revised Code, deprived of his jurisdiction in all civil and criminal causes arising within such municipal corporation, but he retains his jurisdiction as provided by law, outside of the corporate limits of such municipal corporation.

Respectfully,

C. WILLIAM O'NEILL

Attorney General