

2916.

JUSTICE OF THE PEACE—JURISDICTION—OFFENSES OR EVENTS IN WHICH JURISDICTION IS FINAL.

SYLLABUS:

A justice of the peace has jurisdiction only to inquire into a case instituted under the provisions of section 12974, General Code, and either discharge the accused or recognize him to the proper court unless the offense charged should come within paragraphs five and six of Section 13422-3, or in the event it is possible under said section for the affidavit to be filed by the party injured and a plea of guilty entered or in case the accused waives a jury and submits to be tried, in which events he would have final jurisdiction.

COLUMBUS, OHIO, February 5, 1931.

HON. CAMERON MEACHAM, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—Your recent communication reads:

“Section 12974 of the General Code, provides the penalty for failure on the part of parent, guardian or other person having care of a child of compulsory school age, for failure to comply with Section 7762-5, 7763, 7765-1, 7773 and 7773-1 of the General Code.

Section 12974 does not specifically mention the court having proper original jurisdiction.

The question of law involved is whether the Juvenile Court Act makes it compulsory to file the affidavit in the Juvenile Court, or is it possible to file the affidavit in the court of a Justice of the Peace.

I notice that in the case of *Parr et al vs. State of Ohio*, 117 Ohio State, page 23, that the original proceeding was begun before a Justice of the Peace. In this case, however, the question of jurisdiction did not arise.”

Section 12974, General Code, to which you refer, provides:

“Whoever being a parent, guardian or other person having care of a child of compulsory school age violates any of the provisions of sections 7762, 7762-5, 7763, 7765-1, 7773 or 7773-1, General Code, shall upon conviction be fined not less than five dollars and not more than twenty dollars, or the court may in its discretion require the person so convicted to give bond in the sum of one hundred dollars with sureties to the approval of the court, conditioned that he will cause the child under his charge to attend upon instruction as provided by law, and remain as a pupil in the school or class during the term prescribed by law; and upon the failure or refusal of any such parent, guardian or other person to pay said fine and costs or furnish said bond according to the order of the court, then said parents, guardian or other person shall be imprisoned in the county jail not less than ten days nor more than thirty days.”

Clearly, a violation of the above section is a misdemeanor. It is also a

misdemeanor in which a trial by jury is not required because no imprisonment may be made a part of the penalty. The section under consideration does not specifically confer jurisdiction, and it follows that the general provision as to jurisdiction in such offenses will control unless, of course, there are some other special provisions governing such prosecutions. Section 13422-2, General Code, which defines the general jurisdiction of justices of the peace, reads:

“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 other 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.”

It must be kept in mind that justices of the peace do not have final jurisdiction—that is, the authority to try the accused and impose a penalty or acquit him, as contradistinguished from the authority to inquire whether an offense has been committed and discharge the accused or recognize him to the proper court in the absence of a specific provision. For a discussion of these relative powers, see Opinions of the Attorney General, 1921, page 622, and for 1927, page 976.

In a great many instances the legislature has seen fit to give justices of the peace final jurisdiction. Section 13433-9, General Code, provides that when a person is charged with a misdemeanor and the complaint is filed by the party injured, upon a plea of guilty, the magistrate shall pronounce the sentence provided by law.

Section 13433-10 provides that if the charge is a misdemeanor and the defendant waives a jury trial in writing, the magistrate may try him and render final judgment. The attorney general, in the 1927 opinion above mentioned, indicated such final jurisdiction could be conferred by such waiver, irrespective of whether or not imprisonment is part of the penalty.

Section 13422-3, General Code, grants “magistrates,” which term by express provisions of Section 13422-1, General Code, includes justices of the peace, final jurisdiction in seventeen different characters of criminal violations specifically enumerated therein. It is believed that only those offenses mentioned in paragraphs five and six need be considered herein. Said paragraphs read as follows:

“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 minors.”

Section 12974, General Code, hereinbefore quoted, provides a penalty for any parent, guardian or any person having care of a child of compulsory school age who violates any of the provisions of Sections 7762, 7762-5, 7763, 7765-1, 7773 or 7773-1, General Code, mentioned therein.

Section 7762-5 relates to the employment of children on age and schooling certificates, and prescribes certain limitations with reference thereto.

Section 7763 provides for the compulsory attendance of children of school age at school, and sets forth exceptions or instances in which children may be excused. One of the exceptions is when he is excused from school for a limited period for the purpose of performing necessary work directly and exclusively for his parents or guardians.

Section 7765-1 relates to the age and schooling certificate of a child employed by his parents or guardians.

Section 7773 relates to the truancy of children and the duties of the parents or guardians in connection therewith.

Section 7773-1 provides for a warning to child, parent or guardian for failure to comply with the provisions of Section 7767 or 7767-1, General Code.

A perusal of the sections last above mentioned will disclose that there are probably some of those sections which might be said to relate to the employment of a child under fourteen years of age as mentioned under the provisions of paragraph five of Section 13422-3 or may be said to be a regulation, restriction or prohibition on the employment of minors within paragraph six of said section.

It would follow, therefore, that to the extent that any particular violation of Section 12974, comes within the provisions of Section 13422-3, supra, a justice of the peace would have final jurisdiction. It will further follow that to the extent a violation of Section 12974 does not come within the provisions of Section 13422-3, the justice would not have final jurisdiction and could only determine whether or not there was probable evidence of an offense having been committed and recognize the accused to the proper court or discharge him, as the facts would indicate.

Of course, the fact that some of the violations may come within some provision of the Juvenile Court Act and are punishable thereunder, would in no wise deny the jurisdiction hereinbefore mentioned conferred on a justice of the peace.

The case of *Parr, et al vs. State*, which you mention, tends to confuse, for the reason that the justice of the peace in that case exercised final jurisdiction, and rendered final judgment which was affirmed by the Court of Common Pleas, Court of Appeals and Supreme Court. It further appears from the facts stated that the case did not apparently come within any provisions granting final jurisdiction. However, no such point was raised in the case, which, of course, accounts for no consideration having been given to it by the court. The constitutionality of the compulsory education law for the most part was considered. It is believed, therefore, that it would be wholly unfair to argue that the Supreme Court has sanctioned the final jurisdiction of a justice of the peace in such cases.

In specific answer to your inquiries, it is my opinion that a justice of the peace has jurisdiction only to inquire into a case instituted under the provisions of Section 12974, General Code, and either discharge the accused or recognize him to the proper court unless the offense charged should come within paragraphs five or six of Section 13422-3, or in the event it is possible under said section for the affidavit to be filed by the party injured and a plea of guilty entered or in case the accused waives a jury and submits to be tried, in which event he would have final jurisdiction.

In passing, it may be stated that it is difficult to see how an affidavit may be filed by the party injured under said Section 12974, in view of the holding in the case of *Hanaghan v. State*, 51 O. S., 24.

Respectfully,

GILBERT BETTMAN,
Attorney General.