

4310.

JURISDICTION—FINAL JURISDICTION CONFERRED BY SEC. 12981 UPON CERTAIN OFFICIALS OVER OFFENSES DESCRIBED IN SECTION 12974, G. C.

SYLLABUS:

By virtue of the provisions of Section 12981 of the General Code, mayors, justices of the peace, police judges and judges of juvenile courts have final jurisdiction to try the offenses described in Section 12974 of the General Code of Ohio. (Opinion of the Attorney General for 1931, page 184 overruled.)

COLUMBUS, OHIO, June 1, 1935.

HON. MARTIN E. HOEFFEL, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“An attendance officer for the county board of education has filed a considerable number of affidavits with a justice of the peace, for violation of the compulsory school law under Section 12974, General Code.

Under Section 12981, General Code, the justice of the peace has final jurisdiction to try the offenses described in Section 12974.

Under Section 13433-9 and Section 13433-10, the justice of the peace has no jurisdiction except on the plea of guilty.

Please advise me whether the latter sections remove the jurisdiction that has been given to the justice of the peace under Section 12981, General Code?”

Sections 12974 and 12981, General Code, read as follows:

“Sec. 12974. 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.”

“Sec. 12981. Mayors, justices of the peace, police judges and judges of juvenile courts shall have final jurisdiction to try the offenses described in the seven next preceding sections. When complaint is made against a corporation for violating any provision of such sections, summons shall be served, appearance made, or plea entered as provided by law in cases when an indictment is presented against a corporation, except in complaints before magistrates, when service may be made by the constable. In other cases process shall be served and proceedings had as in cases of misdemeanor.”

The sections of the Code quoted above, were enacted in their present form in the same act of the legislature, in 1921. (109 O. L., 396 and 397.) Practically the same statutory provisions had existed for many years prior to that time. See former Section 12974, General Code (Revised Statutes, Section 4002-1) and former Section 12984, General Code (Revised Statutes, Section 4022-11.)

Sections 13433-9 and 13433-10, General Code, read as follows:

"Sec. 13433-9. 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 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."

Said sections 13433-9 and 13433-10, General Code, were enacted in 1929 (113 O. L., 146 and 147) as a part of an act revising and codifying the Code of Criminal Procedure of Ohio.

The provisions of these last mentioned sections as then enacted, are precisely the same as those of former Sections 13510 and 13511, General Code, which provisions had been in force for many years. Said Sections 13510 and 13511, General Code, were expressly repealed when the act in which present Sections 13509 and 13510, General Code, were enacted in 1921. Former Section 13510, General Code, had been, prior to the codification of 1910, Section 7146, of the Revised Statutes of Ohio (86 O. L., 171). Former Section 13511, General Code, prior to the 1910 codification of statutes, was Section 7147 Revised Statutes (95 O. L., 529).

By the terms of Section 12981, General Code, final jurisdiction is granted to a justice of the peace and other named magistrates in cases arising under Section 12974, General Code. This section has not been expressly repealed and its language is unequivocal and needs no interpretation. Unless its provisions are repealed or modified by implication by reason of the enactment of Sections 13433-9 and 13433-10, General Code, in 1929, which were mere re-enactments of statutes previously bearing different code numbers, final jurisdiction is reposed in a justice of the peace in cases arising under Section 12974, General Code.

Inasmuch as the provisions of Sections 13433-9 and 13433-10, General Code, are the same as those of former Sections 13510 and 13511, General Code, which were expressly repealed at the time of the enactment of Sections 13433-9 and 13433-10, General Code, the enactment of these sections did not serve to give new life to their provisions so as to repeal by implication other existing provisions of law which might be inconsistent or repugnant to their provisions. The enactment of these statutes in 1929 served only to affirm and continue in force the provisions of said former Sections 13510 and

13511, General Code. In Lewis' Sutherland Statutory Construction, Section 238, it is stated:

"Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force."

In Corpus Juris, Vol. 59, page 927, it is said:

"The repeal and simultaneous re-enactment of substantially the same statutory provisions is to be construed not as an implied repeal of the original statute but as an affirmance and continuation thereof."

In re Allen, 91 O. S., 315; *State ex rel. vs. Cowen*, 96 O. S., 277.

Moreover, the provisions of Sections 13433-9 and 13433-10, General Code are not so inconsistent or repugnant to the provisions of Section 12981, General Code, that they cannot be reconciled.

The provisions of Section 12981, General Code, are special in character, that is, they confer final jurisdiction on certain magistrates in certain specific cases. The provisions of Sections 13433-9 and 13433-10, General Code, are general, conferring jurisdiction generally upon certain magistrates in all misdemeanors. It is a general rule of statutory construction of universal application, that where two statutes treat of the same subject, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although latest in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject so far as comes within its particular provisions, unless a different legislative intent is plainly, clearly, and unequivocally manifested. Lewis' Sutherland Statutory Construction, Vol. I, page 528; Corpus Juris, Vol. 51, page 931; *Fosdick vs. Perrysburg*, 14 O. S. 472; *State vs. Newton*, 26 O. S., 200; *Commissioners vs. Public Works*, 39 O. S. 628.

The same question involved here was considered by my predecessor in an opinion which will be found in the reported Opinions of the Attorney General for 1931 at page 184. It was there held as disclosed by the syllabus of that opinion, as follows:

"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."

No consideration was given in that opinion to the provisions of Section 12981 of the General Code. The statute was not mentioned. I am compelled to disagree with the conclusion reached in that opinion, and the opinion is therefore overruled.

In specific answer to your question, I am of the opinion that a justice of the peace has final jurisdiction to try the offenses described in Section 12974 of the General Code of Ohio.

Respectfully,
JOHN W. BRICKER,
Attorney General