

876.

MUNICIPAL COURT OF MANSFIELD—JURISDICTION.

SYLLABUS:

1. *The Municipal Court of Mansfield, Ohio, has jurisdiction to try misdemeanors committed within the township of Madison, and all violations of city ordinances within the city of Mansfield, and has no jurisdiction to try misdemeanors committed in Richland County outside the township of Madison, except violations under Sections 6212-13, General Code, to 6212-20, inclusive, generally known as the Crabbe Act.*

2. *The Municipal Court of Mansfield, Ohio, has jurisdiction to try violations under Sections 6212-13, General Code, to 6212-20, General Code, inclusive, generally known as the Crabbe Act, committed in Richland County, by virtue of the provisions of Section 6212-17f of the General Code.*

3. *The Municipal Court of Mansfield, Ohio, has no jurisdiction to try quasi-criminal proceedings.*

4. *The Municipal Court of Mansfield, Ohio, has jurisdiction to conduct a preliminary examination, and either discharge the accused or recognize him to appear before the proper court in felony cases committed in Richland County, Ohio.*

COLUMBUS, OHIO, September 17, 1929.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date in which you request an opinion from this office, which is in part as follows:

“We respectfully request an opinion from your department upon the jurisdiction of the Municipal Court of Mansfield as to misdemeanors and quasi-criminal proceedings.”

Sections 1579-978 to 1579-1030, General Code, inclusive, provide for the establishment of a Municipal Court in and for the city of Mansfield and township of Madison, Richland County, Ohio. Section 1579-978, General Code, provides as follows:

“That there shall be, and hereby is, established in and for the city of Mansfield and township of Madison, Richland County, Ohio, a municipal court, which shall be a court of record and shall be styled ‘The Municipal Court of Mansfield, Ohio,’ hereinafter designated and referred to as the ‘Municipal Court.’”

Section 1579-989, General Code, provides as follows:

“The Municipal Court shall have jurisdiction of all misdemeanors committed within the township of Madison, and all violations of the city ordinances within the city of Mansfield, of which police courts in municipalities or justices of the peace now have, or may hereafter be given jurisdiction. In felonies the Municipal Court shall have the powers which police courts in municipalities and justices of the peace now have, or may hereafter be given.”

The power of the Legislature to create a Municipal Court is granted by the provisions of Article IV, Section 1 of the Ohio Constitution, which is as follows:

"The judicial power of the state is vested in a Supreme Court, Courts of Appeals, Courts of Common Pleas, Courts of Probate, and such other courts inferior to the Courts of Appeals as may from time to time be established by law."

The expression to "be established by law," as it appears in this section of the Constitution, has been construed by the Supreme Court of Ohio in the case of *State ex rel. vs. Hutsinpillar*, 112 O. S., 473, as meaning, to be established by the General Assembly of the State of Ohio. The power to create the court carries with it the power to define its jurisdiction, and the Municipal Court of Mansfield, Ohio, has only such jurisdiction as is given to it by the Legislature of the state. Section 1579-989, supra, defines the jurisdiction of the Municipal Court in misdemeanor and felony cases. The two sentences of this section should be considered separately. The first deals with the jurisdiction of the Municipal Court of Mansfield, Ohio, with reference to misdemeanor cases, and the second sentence deals with the jurisdiction of the Municipal Court in felony cases. These sentences do not relate to each other, and cannot be considered together for the purposes of construction. The first sentence provides that the Municipal Court shall have jurisdiction of all misdemeanors committed within the township of Madison, and all violations of the city ordinances within the city of Mansfield, of which police courts in municipalities or justices of the peace now have, or may hereafter be given, jurisdiction. It appears that this language is clear and unambiguous, that the jurisdiction of the Municipal Court of Mansfield with reference to misdemeanors is limited to those committed within the township of Madison, and with reference to violations of city ordinances, to those committed within the city of Mansfield.

The sections of the General Code which refer generally to the jurisdiction of police courts and justices of the peace have no application in determining the jurisdiction of the Municipal Court of Mansfield, Ohio, with reference to misdemeanor cases and violations of city ordinances.

At this point in my discussion I desire to direct your attention to Section 6212-17f of the General Code, which section provides as follows:

"Any justice of the peace, mayor, municipal or police judge, probate or common pleas judge, shall have final jurisdiction within their respective counties of all misdemeanors in such counties under this act."

This section refers to violations under Sections 6212-13 to 6212-20 inclusive of the General Code, commonly known as the Crabbe Act. Section 6212-17f of the General Code became effective August 5, 1921. It is part of the Crabbe Act, which is a general act dealing specifically with the liquor traffic and its enforcement. The Municipal Court Act of Mansfield is a special act dealing with general subjects, such as giving jurisdiction to its Municipal Court in civil and criminal cases. While the Municipal Court Act of Mansfield is a later act than Section 6212-17f of the General Code and provides that the Municipal Court shall have jurisdiction of all misdemeanors committed within the township of Madison, it does not supersede Section 6212-17f of the General Code so as to limit the jurisdiction of the Municipal Court to violations of the Crabbe Act committed only in Madison Township.

It is a well known rule of statutory interpretation that where there is any repugnancy between a 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 definite way, the special statute will prevail over the general statute, and where the general statute is later, the special will be construed as remaining an exception to its terms.

I am of the view that since Section 6212-17f deals only with the jurisdiction of

Municipal Courts, for violations of misdemeanors under the Crabbe Act, it is an exception to the Municipal Court Act which deals generally with the jurisdiction of the Municipal Court in misdemeanor cases. It therefore follows that the Municipal Court of Mansfield, Ohio, has jurisdiction of violations under Sections 6212-13, General Code, to 6212-20, General Code, inclusive, generally known as the Crabbe Act, committed in Richland County.

The second sentence of Section 1579-989, General Code, provides as follows:

“ * * * In felonies the Municipal Court shall have the powers which police courts in municipalities and justices of the peace now have, or may hereafter be given.”

In order to determine the jurisdiction of the Municipal Court of Mansfield, Ohio, with reference to felony cases, it is necessary to consider the statutes which define the powers of the police courts in municipalities and of justices of the peace in felony cases.

Section 4577, General Code, reads as follows:

“The police court shall have jurisdiction of, and to hear, finally determine, and to impose the prescribed penalty for, any offense under any ordinance of the city, and of any misdemeanor committed within the limits of the city, or within four miles thereof. The jurisdiction of such court to make inquiry in criminal cases shall be the same as that of a justice of the peace. Cases in which the accused is entitled to a jury trial, shall be so tried, unless a jury be waived.”

Section 4583, General Code, in so far as it is pertinent to your inquiry, and is applicable to police courts, provides in part as follows:

“In felonies committed in the county, the court shall have the powers of a justice of the peace to hear the case, and discharge, recognize or commit.
* * * ”

Section 13422, General Code, which is now designated as Section 2 of Chapter 1 of the Code of Criminal Procedure enacted by the 88th General Assembly, provides 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 recognition, or otherwise dispose of the complaint as provided by law. He also may hear complaints of the peace and issue search warrants.”

From an examination of these statutes, it appears that a police court and a justice of the peace have jurisdiction coextensive with the county in which they are located, to discharge, recognize or commit persons who are brought before them for a commission of a felony. In other words, a police judge or justice of the peace acts as an examining magistrate in felony cases brought before him, which are committed in the county in which the police court or justice of the peace is located.

Since Section 1579-989, General Code, gives the Municipal Court of Mansfield, Ohio, in felony cases, the same powers which police courts in municipalities or justices of the peace now have, therefore, the Municipal Court of Mansfield, Ohio, has jurisdiction in felony cases to discharge, recognize or commit any person charged with a felony committed within Richland County.

While the title of Section 1579-989, *supra*, refers to jurisdiction of misdemeanor and quasi-criminal proceedings, there is nothing therein which gives the Municipal Court of Mansfield any jurisdiction in quasi-criminal proceedings.

By reason of certain statements made in your letter with reference to the jurisdiction of Common Pleas and Probate Courts in misdemeanor cases, and the jurisdiction of justices of the peace in felony and misdemeanor cases, your attention is directed to an opinion rendered by my predecessor under date of January 8, 1929, and found in the Opinions of the Attorney General for 1928, Volume 4, page 3034. This opinion exhaustively reviews the jurisdiction of justices of the peace, Probate, and Common Pleas Courts in misdemeanor and felony cases. The syllabus of this opinion is as follows :

“1. Courts of Common Pleas do not have jurisdiction in misdemeanor cases unless indictments are first procured by a grand jury, excepting in those instances wherein the Legislature has specifically given jurisdiction to said courts to try criminal cases upon affidavits.

2. In cases of felony, a justice has jurisdiction only as an examining magistrate, and such jurisdiction is not affected by the Tumey decision.

3. A justice of the peace, or mayor is without jurisdiction to render final judgment in misdemeanors even though such final jurisdiction is attempted to be conferred by statute, except in those instances wherein the costs may be, and properly are secured as provided in Section 13499 of the General Code, or in cases wherein the statutes provide for the payment of the magistrate's costs irrespective of the outcome of the case, as in prosecutions under Section 1442 of the General Code which relates to violations of the Fish and Game Laws. However, if the defendant desires to take advantage of the question of jurisdiction in such a case, such objections must be made at the time of, or before trial.

4. In other cases of misdemeanors, such as traffic law violations, a justice is without jurisdiction to render a final judgment unless as provided in Section 13511, General Code, the defendant waives in writing the right of trial by jury and submits to be tried by said justice. A mayor of course has final jurisdiction in such cases within the limitations of the Tumey decision .

5. The Probate Court under the provisions of Sections 13441 et seq., has jurisdiction to hear such criminal cases as it has jurisdiction to try upon the filing of an information by the Prosecuting Attorney. Such courts, however, have jurisdiction to hear cases arising under the Crabbe Act upon affidavit.”

Your attention is also directed to Sections 13424 and 13425, General Code. Section 13424 of the General Code is as follows :

“The Probate Court shall have concurrent jurisdiction with the Court of Common Pleas in all misdemeanors and all proceedings to prevent crime.”

Section 13425 of the General Code is as follows :

“The Court of Common Pleas shall have original jurisdiction of all crimes and offenses, except in cases of minor offenses, the exclusive jurisdic-

tion of which is vested in justices of the peace or in other courts inferior to the Common Pleas. * * * "

Section 13424 and that part of Section 13425, quoted herein, have been carried into a recent Act passed by the 88th General Assembly revising and codifying the Code of Criminal Procedure of Ohio.

In view of the foregoing discussion, and in specific answer to your inquiry, I am of the opinion:

1. The Municipal Court of Mansfield, Ohio, has jurisdiction to try misdemeanors committed within the township of Madison, and all violations of city ordinances within the city of Mansfield, and has no jurisdiction to try misdemeanors committed in Richland County outside the township of Madison, except violations under Sections 6212-13, General Code, to 6212-20, inclusive, generally known as the Crabbe Act.

2. The Municipal Court of Mansfield, Ohio, has jurisdiction to try violations under Sections 6212-13, General Code, to 6212-20, General Code, inclusive, generally known as the Crabbe Act, committed in Richland County, by virtue of the provisions of Section 6212-17f of the General Code.

3. The Municipal Court of Mansfield, Ohio, has no jurisdiction to try quasi-criminal proceedings.

4. The Municipal Court of Mansfield, Ohio, has jurisdiction to conduct a preliminary examination, and either discharge the accused or recognize him to appear before the proper court in felony cases committed in Richland County, Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

877.

APPROVAL, BONDS OF MAHONING COUNTY—\$164,500.00.

COLUMBUS, OHIO, September 17, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

878.

DISAPPROVAL, REIMBURSEMENT FOR PURCHASE OF LAND FOR
SCHOENBRUNN MEMORIAL.

COLUMBUS, OHIO, September 17, 1929.

THE SCHOENBRUNN COMMITTEE, *c/o Ohio State Archaeological and Historical Society, Columbus, Ohio.*

GENTLEMEN:—There has been submitted to this department, apparently for my examination and approval, an abstract of title relating to a certain tract of six and eighty-seven hundredths acres of land conveyed to the State of Ohio for the purpose of the Schoenbrunn Memorial by a special warranty deed executed by the Baltimore