

**Note from the Attorney General's Office:**

1978 Op. Att'y Gen. No. 78-001 was overruled by  
1984 Op. Att'y Gen. No. 84-014.

**OPINION NO. 78-001**

**Syllabus:**

**Jurisdiction over criminal violations of R.C. 3704.05 rests with the Court of Common Pleas, and may not be conferred upon an inferior court by local rule.**

**To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio  
By: William J. Brown, Attorney General, January 5, 1978**

I have before me your request for my opinion on the following question:

Where a violation of Revised Code 3704.05 occurs within the corporate limits of a municipality, and in a jurisdiction where the Court of Common Pleas by local rule transfers all offenses other than felonies to the appropriate Municipal Court, who is responsible for prosecuting such criminal actions?

Presently, all offenses other than felonies which are committed within the corporate limits of a municipality are prosecuted through that Municipal Law Department. All felonies which are committed within the County are prosecuted through the Office of the County Prosecutor in Common Pleas Court. It appears that a non-felony violation of 3704.05 ORC occurring within the corporate limits of a municipality would be without a forum.

R.C. 3704.05 prohibits violations of the air pollution regulations established by the Director of Environmental Protection. Criminal penalties for violation of R.C. 3704.05 are established in R.C. 3704.99, which provides, in pertinent part, as follows:

(A) Whoever violates division (A), (B), (C), (D), (E), (F), or (G) of section 3704.05 of the Revised Code shall be fined not more than ten thousand dollars . . .

(B) Whoever violates division (H) of section 3704.05 . . . shall be fined not more than twenty-five thousand dollars.

Significantly, there is no provision for incarceration for violation of R.C. 3704.05, but only fines as set forth above.

In a recent opinion I had occasion to consider R.C. 3704.05. 1977 Op. Att'y Gen. No. 77-016. I concluded in that opinion that:

. . . county prosecuting attorneys can initiate and prosecute criminal actions for violations of R.C. 3704.02, but are not empowered to bring civil actions to

enforce that section. City attorneys, city solicitors, and city law directors are not authorized to initiate or prosecute either criminal or civil actions for violations of R.C. 3704.05.

As discussed in the Opinion, this conclusion rested in part upon an unreported case from the Court of Appeals in Miami County, State v. Supinger, Case No. 75 CA 9 and 10, (App. 1975).

The Supinger case was a prosecution brought in municipal court for violation of R.C. 3704.05 (G). On appeal, the defendant argued that the municipal court lacked jurisdiction over the subject matter, since a violation of R.C. 3704.05 was not a misdemeanor. Under R.C. 1901.20 and R.C. 2931.041, the criminal jurisdiction of municipal courts is limited to violations of municipal ordinances and state misdemeanors. After consideration of R.C. 2901.02, the court concluded that the offense described in R.C. 3704.05 was neither a felony nor a misdemeanor, but an "unclassified offense." Therefore, the municipal court lacked jurisdiction to hear the action, and the conviction was reversed. Jurisdiction over a violation of R.C. 3704.05 thus belongs to the Court of Common Pleas as a court of general criminal jurisdiction. See R.C. 2931.03.

Under the local rule which you describe in your request, all "non-felony" offenses are transferred to the municipal court. However, under Supinger, *supra*, a municipal court lacks jurisdiction over such an offense. Thus, the issue presented is whether the common pleas court has the authority to confer jurisdiction upon the municipal court by local rule.

Under Ohio Const. art. IV, §1, the jurisdiction of the various courts is to be determined by the General Assembly. Monroeville v. Ward, 27 Ohio St.2d 197 (1971). While the various courts established by the General Assembly may establish local rules to govern their particular jurisdictions, no local rule will be effective if it is in conflict with a statute of general application. Grecian Gardens, Inc. v. Board of Liquor Control, 2 Ohio App.2d 112 (1964).

Since the jurisdiction of a municipal court is established by statute, any local rule in conflict with that statute would be ineffective. Grecian Garden, *supra*. In fact, the Supreme Court, in Humphrys v. Putnam, 172 Ohio St. 456, 460 (1961), made the following observation regarding the application of its own rules.

It is fundamental, however, that courts have only such jurisdiction as is conferred upon them by the Constitution or by the Legislature acting within its constitutional authority. Jurisdiction may not be assumed by a court by rule or by consent.

The issue in Humphrys was whether an order of the court of appeals was a "final order," but the basic premise for the court's decision was the language cited, *supra*.

Applying the rule in Humphrys to your question, it is apparent that the Court of Common Pleas may not relinquish its jurisdiction over R.C. 3704.05 criminal prosecutions by local rule. Only the General Assembly possesses the power to so act. Since jurisdiction over such prosecutions is limited to the Court of Common Pleas, the responsibility for prosecuting alleged violations of R.C. 3704.05 rests with the county prosecutor.

One further point deserves comment. The authority to prosecute for criminal violations of R.C. 3704.05 is specifically conferred upon the Attorney General by R.C. 3704.06. Such authority exists, however, only when the Director of Environmental Protection requests the Attorney General to prosecute. County Prosecutors appear to have broad discretion in this regard, since under R.C. 309.08 the County Prosecutor may prosecute any crime committed in his county and need not, therefore, await a request from the Director of Environmental Protection. See, 1977 Op. Att'y Gen. No. 77-016, p. 2-53.

Accordingly, it is my opinion, and you are so advised that:

Jurisdiction over criminal violations of R.C. 3704.05 rests with the Court of Common Pleas, and may not be conferred upon an inferior court by local rule.