

202.

APPROVAL, BONDS OF VILLAGE OF WADSWORTH, MEDINA COUNTY,  
OHIO—\$16,000.00.

COLUMBUS, OHIO, March 17, 1927.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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203.

APPROVAL, BONDS OF CLEVELAND HEIGHTS CITY SCHOOL DIS-  
TRICT, CUYAHOGA COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, March 17, 1927.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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204.

JUSTICE OF PEACE—JURISDICTION—VIOLATIONS RELATING TO PRO-  
TECTION, PRESERVATION OR PROPAGATION OF BIRDS, FISH,  
GAME AND FUR-BEARING ANIMALS—NOT AFFECTED BY DE-  
CISION, TUMEY VS. STATE OF OHIO, SUPREME COURT OF UNITED  
STATES—DEFENDANT ENTITLED TO FAIR AND IMPARTIAL  
TRIAL—"PECUNIARY INTEREST."

**SYLLABUS:**

*The decision of the Supreme Court of the United States in the case of Tumey vs. State of Ohio, decided March 7, 1927, does not affect the jurisdiction of a justice of the peace in prosecutions for violations of any provision of the laws relating to the protection, preservation or propagation of birds, fish, game and fur-bearing animals, so far as pecuniary interest is concerned. However, it must be borne in mind at all times that the defendant is entitled to a fair and impartial trial and pecuniary interest is not the only interest which will disqualify a magistrate.*

COLUMBUS, OHIO, March 18, 1927.

*Department of Agriculture, Division of Fish and Game, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your recent request which reads as follows.

"We have had several inquiries in the past few days from our game pro-  
tectors asking whether the decision rendered by the Supreme Court against

the justices of the peace would have any effect as to the trying of Fish and Game cases in their courts, in the future."

The syllabus of the case of *Tumey vs. State of Ohio*, (Supreme Court of the United States, decided March 7, 1927), to which you refer, reads as follows:

1. A law subjecting the liberty and property of an accused to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against the accused is in conflict with the due process clause of the Federal Constitution.

2. In determining what process of law is, under the Fifth or Fourteenth Amendments to the Federal Constitution, the court must look to the settled usages and practice under the common and statute law of England before the settlement of the American colonies, which were shown not to have been unsuited to civil and political conditions in the new country by having been acted upon after such settlement.

3. A system by which an inferior judge is paid for his services only when he convicts the defendant has not become so embodied by custom in the general practice, either at common law or in this country, that it can be regarded as due process of law, unless the costs usually imposed are so small that they may be properly ignored as within the maxim "*de minimis non curat lex.*"

4. The prospect of receipt or loss of as much as \$12.00 in each case by a village mayor is not a minute, remote, trifling or insignificant interest, and statutes which put in his power to earn that amount in addition to his salary in case of conviction, and at the same time to further the interest of the village of which he is the chief executive by levying heavy fines, part of which may be used in public improvements and reduction of taxes in the village, necessarily involve a lack of due process of law in the trial of defendants charged with crime before him.

5. Ohio statutes giving a village mayor county-wide jurisdiction in liquor cases, with compensation for services dependent upon convictions, are unconstitutional."

Section 1448, General Code, provides:

"A justice of the peace, mayor or police judge shall have final jurisdiction within his county in a prosecution for violation of any provision of the laws relating to the protection, preservation or propagation of birds, fish, game and fur-bearing animals and shall have like jurisdiction in a proceeding for the condemnation and forfeiture of property used in the violation of any such law."

Section 1452, General Code, provides:

"A person authorized by law to prosecute a case under the provisions of this chapter shall not be required to advance or secure costs therein. If the defendant be acquitted or discharged from custody, or if he be convicted and committed in default of payment of fine and costs, such costs shall be certified, under oath by the justice to the county auditor who shall correct all errors therein and issue his warrant on the county treasurer payable to the person or persons entitled thereto. The county auditor shall certify such costs, which shall, in place of the jury fee authorized by Section 12375 of the Gen-

eral Code include actual jury fees paid in such case by the county, to the secretary of agriculture, who shall draw a voucher upon the auditor of state therefor, payable out of the fund in the state treasury for the use of such secretary in the preservation and protection of birds, game birds, game animals and fish, and such auditor of state shall issue and forward his warrant for such amount to such county auditor to reimburse such county treasurer."

By the provisions of Section 1452, *supra*, the liberty and property of an accused in prosecutions for violation of any provision of the laws relating to the protection, preservation or propagation of birds, fish, game and fur-bearing animals, is not subjected to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against the accused.

By the provisions of said section, whether the defendant be acquitted or discharged from custody, or be convicted and committed in default of payment of fine and costs, the justice certifies such costs to the county auditor who thereupon issues his warrants on the county treasurer payable to the persons entitled thereto. The county treasury is thereafter reimbursed from the fund in the state treasury for the use of the secretary of agriculture in the preservation and protection of birds, animals and fish.

In these prosecutions the justice of the peace has no pecuniary interest in the resolving of the subject matter which he has to decide. In the event of an acquittal or a conviction, the justice receives his fees direct from the county treasury. It cannot be said that the justice hearing such a case has a direct, personal or pecuniary interest in arriving at his judgment.

It is my opinion that the decision of the Supreme Court of the United States in the case of *Tumey vs. State of Ohio*, decided March 7, 1927, does not affect the jurisdiction of a justice of the peace in prosecutions for violations of any provision of the laws relating to the protection, preservation or propagation of birds, fish, game and fur-bearing animals, so far as pecuniary interest is concerned. However, it must be borne in mind at all times that the defendant is entitled to a fair and impartial trial.

The following quotations will illustrate what I mean :

"An independent, unbiased, disinterested, fearless judiciary is one of the bulwarks of American liberty and nothing should be suffered to exist that would cast a doubt of shadow or suspicion on its firmness and integrity."

"Every litigant is entitled to nothing less than the cold neutrality of an impartial judge, who must possess the disinterestedness of a total stranger to the interests of the parties involved in the litigation, whether that interest is revealed by an inspection of the record or developed by evidence *aliunde* the record."

What I want to make clear is that a pecuniary or financial interest is not the only disqualification of a judge. If a justice of the peace were to enter into an understanding, express or implied, that he would convict the defendants brought before him or that he would punish them in a certain way, such conduct would also disqualify the justice of the peace.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*