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JUSTICE OF PEACE—NO JURISDICTION—TO HEAR CASES INVOLVING VIOLATIONS OF VILLAGE ORDINANCE WHERE VILLAGE LIES WITHIN TOWNSHIP IN WHICH HE IS ELECTED.

SYLLABUS:

A justice of the peace does not have jurisdiction to hear cases involving violations of an ordinance of a village which lies within the township in which he is elected.

Columbus, Ohio, December 3, 1953

Hon. John H. Barber, Prosecuting Attorney
Fulton County, Wauseon, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"I have a request for your opinion on the question of whether a Justice of the Peace has jurisdiction to hear cases involving violations of an ordinance of a village which lies entirely within the township served by the justice. If the justice does have such jurisdiction, what disposition is to be made of the fines involved therein?

"Being mindful of the general principle that a justice's court is a court of limited jurisdiction, possessing only such powers as are expressly conferred by statute, I have searched the statutes to determine if jurisdiction is conferred on justices in village ordinance cases, and can find none. Nor can I find where justices are definitely precluded from assuming jurisdiction. Sec. 1905.09 Ohio Revised Code, provides the mayor shall have final, but not

exclusive jurisdiction to hear any prosecution for violation of an ordinance.

“I have ruled that a justice does not have jurisdiction to hear ordinance cases and pay the fines into the village treasury. To resolve any doubt about the matter, I have been asked to seek your informal opinion on these questions.”

The jurisdiction of justices of the peace in matters other than civil, in so far as it is pertinent to your inquiry, is set forth in Section 2931.02, Revised Code, which provides in part as follows :

“A justice of the peace is a conservator of the peace and has jurisdiction *in criminal cases* throughout the township in which he is elected and where he resides, * * *” (Emphasis added.)

Since, as you have pointed out in your inquiry, the justice's court is one of limited jurisdiction, possessing only those powers expressly conferred by statute, *Stahl v. Currey*, 135 Ohio St., 253, the right to hear and determine ordinance violation cases, must be derived from that portion of Section 2931.02 cited supra, or from some indication of legislative intent that ordinance cases were included within the purview of “criminal cases” as used in that statute.

From a comparison with other statutes it would appear that the legislature has considered ordinance cases to be in a somewhat different category than felonies and misdemeanors which are usually collectively referred to as crimes. For example, in defining the criminal jurisdiction of the municipal court, power is expressly conferred to hear and determine ordinance cases as well as misdemeanors, together with jurisdiction to discharge, recognize or commit in felony cases, Section 1901.20, Revised Code. The same distinction is incorporated in those statutes defining the jurisdiction of the police court, Sections 1903.06 and 1903.07, Revised Code, as well as the mayor's court, Sections 1905.01 to 1905.16, Revised Code. In the light of these express grants to the municipal, police and mayor's courts, the lack of such an express grant to the justice's court assumes added significance.

It may also be noted that our courts have held that the conviction of a violation of a municipal ordinance is not a “crime” within former Section 13444-2, General Code, now Section 2945.42, Revised Code, so as to allow the record of conviction to be introduced for the purpose of affecting credibility of a witness. *Coble v. State*, 31 Ohio St., 100.

A further indication of legislative intent may be gleaned from Section 2931.08, Revised Code, providing:

“Fines collected by a justice of the peace shall be paid into the general fund of the county where the offense was committed within thirty days after collection * * *”

It will be observed that remittance to the county treasury is mandatory, subjecting the justice to penalty for non-compliance, Section 2931.09, Revised Code. There is no provision whereby the justice is permitted to pay fines into a village or city treasury. Inasmuch as any fines collected as a result of conviction in ordinance cases properly belong to the municipality in the first instance, the fact that the legislature has omitted to provide any machinery whereby a justice could pay a fine imposed in an ordinance case to the municipality entitled thereto, compels me to conclude that jurisdiction over such cases was not intended.

Accordingly, in specific answer to your inquiry it is my opinion that a justice of the peace does not have jurisdiction to hear cases involving violations of an ordinance of a village which lies within the township in which he is elected.

Respectfully,

C. WILLIAM O'NEILL
Attorney General