

mer section and gives only the highway director the right to condemn private property for road purposes."

The precise question which you raise has already been passed upon by this department in Opinion No. 2110, dated May 17, 1928, addressed to Hon. Mervin Day, Prosecuting Attorney, Paulding, Ohio. Since this opinion sufficiently answers your inquiry, I shall not repeat the reasonings for my conclusion, but am enclosing herewith a copy thereof.

By way of specific answer to your inquiry, however, it is my opinion, where an application for state aid has been filed under the provisions of Section 1191, General Code, prior to the effective date of the Norton-Edwards Act, such filing constitutes a pending proceeding within the meaning of Section 26 of the General Code and it is the duty of the board of county commissioners, where it is necessary to acquire a right of way for a road improvement, to proceed under the provisions of Section 1201 of the General Code prior to its amendment in the Norton-Edwards act.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2442.

MAGISTRATE—DUTY WHEN PLEA OF GUILTY IS ENTERED TO VIOLATION OF SECTION 12819, GENERAL CODE.

SYLLABUS:

When an accused is brought before a magistrate charged with the violation of the provisions of Section 12819, General Code, to which charge the defendant enters a plea of guilty, and it appears to the examining magistrate that the offense has been committed under the provisions of said section and there is probable cause to believe that the accused is guilty, it is the duty of the magistrate to bind the defendant over to the common pleas court to be disposed of by the consideration of the grand jury.

COLUMBUS, OHIO, August 15, 1928.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"I hereby request your opinion on the following proposition:

Under Section 12819, General Code, has a Justice of the Peace final jurisdiction, upon a plea of guilty, to impose a fine upon the offender, or is carrying a concealed weapon a felony, which would require the Justice of the Peace to recognize the accused to the grand jury regardless of whether he enters a plea of guilty or not guilty.

I have had requests from several Justices of the Peace throughout the county for an opinion on this proposition, and I have instructed them that the jurisdiction of a Justice of the Peace, under Section 12819, is limited to a preliminary investigation, and that in no case, under said section, has a Justice power to impose a fine, upon a plea of guilty."

Sections 12819 and 12372, General Code, provide as follows:

Section 12819. "Whoever carries a pistol, bowie knife, dirk, or other dangerous weapon concealed on or about his person shall be fined not to exceed five hundred dollars, or imprisoned in the county jail or workhouse not less than thirty days nor more than six months, or imprisoned in the penitentiary not less than one year nor more than three years. Provided, however, that this act shall not affect the right of sheriffs, regularly appointed police officers of incorporated cities and villages, regularly elected constables, and special officers as provided by Sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed when on duty. Provided, further, that it shall be lawful for deputy sheriffs and specially appointed police officers, except as are appointed or called into service by virtue of the authority of said Sections 2833, 4373, 10070, 10108 and 12857 of the General Code to go armed if they first give bond to the State of Ohio, to be approved by the clerk of the court of common pleas, in the sum of one thousand dollars, conditioned to save the public harmless by reason of any unlawful use of such weapons carried by them; and any person injured by such improper use may have recourse on said bond."

Section 12372. "Offenses which may be punished by death, or by imprisonment in the penitentiary, are felonies; all other offenses are misdemeanors."

Since provision is made in Section 12819, supra, to impose a sentence of imprisonment in the penitentiary on the accused, notwithstanding the option is given to impose a sentence less severe, the crime, under the rule of Ohio, is classified as a felony.

In the case of *McKelvy vs. The State of Ohio*, 87 O. S. 1, the court, in the first branch of the syllabus, states the rule as follows:

"As the punishment provided by Section 13008, General Code of Ohio, for failure by a father to support his illegitimate child may be imprisonment in the penitentiary, this makes such offense a felony, and a justice of the peace therefore has no jurisdiction to try a person accused of violating such section, but is only authorized to conduct a preliminary examination and either discharge the accused or recognize him to appear before the proper court."

Judge O'Hara, at page 7 of the opinion, among other things, says:

"As the punishment for the offense charged herein may be imprisonment in the penitentiary under Section 13008 above, this fixes its character and makes it a felony, notwithstanding the fact that it may also be punished as a misdemeanor. 1 Bish. Crim. Law (8 ed.), Sec. 619; 12 Cyc., 132; *State vs. Mayberry*, 48 Me. 218; *Quillin's Case*, 105 v. 874; *State vs. Waller*, 43 Ark. 381; *People vs. War*, 20 Cal. 117; *State vs. Melton*, 117 Mo. 618; *State vs. Hamilton*, 3 C. C. 10, 2 C. D. 6; *Smith vs. State*, 24 C. C. 140, 4 C. C. (n. s.) 101."

In the case of *Seaman vs. State*, 106 O. S. 178, 179, the rule as expressed in the *McKelvy* case is approved and followed. However, notwithstanding the defendant on arraignment enters a plea of guilty to the charge, the examining magistrate is authorized by law to hear sufficient evidence to warrant him in binding the defendant over to the Common Pleas Court. See *State vs. James Rilly*, 23 O. S. 562.

Answering your question specifically, I am of the opinion that if it appears that an offense under the provisions of Section 12819, General Code; has been committed,

by the accused, the justice of the peace does not have jurisdiction to dispose of the case but he should, on the plea of guilty by the accused, if he has probable cause to believe the accused is guilty of the offense, bind the defendant over to the Common Pleas Court to be disposed of by the consideration of a grand jury.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2443.

PUBLIC BUILDING—CONTROL OF JOINT VILLAGE AND TOWNSHIP
HALL, DISCUSSED.

SYLLABUS:

The control, management and duty of maintenance of a town hall or public building erected by a township and a village jointly are vested in the board of township trustees and in the council of the village.

COLUMBUS, OHIO, August 1, 1928.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“When a township and a village erect a town hall or public building under authority of Sections 3399 to 3402, inc., General Code, who has the control, management and duty of maintenance of such hall or building.”

The provisions of the General Code relative to the construction of town halls by townships and the union of townships and villages in the joint construction of two halls and other public buildings are found in Sections 3395 to 3402, inclusive, General Code. The specific sections which contain the authority for the union of villages and townships in the construction of such town halls and other public buildings are Sections 3399 to 3402, inclusive, General Code. Section 3399 provides as follows:

“The electors of a township in which a village is situated, and the electors of such village may if both so determine, as hereinafter provided, unite in the enlargement, improvement or erection of a public building.”

Section 3400 provides for applications to be signed by not less than twenty-five resident freeholders of the township and not less than twenty-five resident freeholders of the village; Section 3401 provides for submitting the question to the electors at the next general township and municipal election; and Section 3402 provides:

“If at such election two-thirds of the electors of the township and of the village voting, vote in favor of such improvement, the trustees of such township and the council of the village shall jointly take such action as is necessary to carry out such improvement.”

There is no specific provision among the sections above referred to as to what officers, board or other body shall have the control and management of a town hall or