

932.

APPROVAL, BONDS OF HURON VILLAGE SCHOOL DISTRICT, ERIE COUNTY, \$3,243.74, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, November 27, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

933.

A DEFENDANT MAY BE TRIED UNDER EITHER THE STATE LAW, FEDERAL LAW OR AN ORDINANCE, FOR MANUFACTURING LIQUOR—SECTION 6212-17 G. C. CONSTRUED.

SYLLABUS:—

A defendant may be tried under either the state law, federal law, or an ordinance, for manufacturing liquor.

If an ordinance makes it an offense to manufacture a distilled liquor, the courts of the municipality have final jurisdiction.

If the charge is for manufacturing a distilled liquor and it is brought under a state or federal statute the courts of a municipality do not have final jurisdiction, and should bind over or discharge the defendant under the usual rules in such proceedings.

If the charge is filed under a state or federal law and is of a less degree than a felony, and it develops that a felony has been committed the court of the municipality may bind over to a court of competent jurisdiction, but the statute does not make such action mandatory.

COLUMBUS, OHIO, November 28, 1923.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication of October 10th, as follows:

“Section 6212-17 G. C., as amended, 110 O. L. 49, provides in part that: Except as herein provided, any person who violates the provisions of this act (G. C. Secs. 6212-13 to 6212-20), for a first offense shall be fined not less than one hundred dollars nor more than one thousand dollars; for a second offense he shall be fined not less than three hundred dollars nor more than two thousand dollars; for a third and each subsequent offense, he shall be fined not less than five hundred dollars nor more than two thousand dollars and be imprisoned in the state penitentiary not less than one year nor more than five years. Any person who in violation of this act (G. C. Secs. 6212-13 to 6212-20) manufactures distilled liquor, for a first offense shall be fined not less than five hundred dollars nor more than three thousand dollars and be imprisoned in

the state penitentiary not less than one year nor more than five years, and for a second and each subsequent offense shall be fined not less than one thousand dollars nor more than five thousand dollars and be imprisoned in the state penitentiary not less than two years nor more than ten years. * * * ”

“Many Ohio municipalities have ordinances punishing the illegal manufacture of liquor, including distilled liquor, as a misdemeanor with penalties not exceeding fine of \$500.”

“Question: In view of Section 6212-17 G. C., as amended, may a defendant be tried for manufacturing liquor under an ordinance only, or in view of the provisions of said section, is it mandatory that prosecution be also brought under the state laws?”

“An early reply will be greatly appreciated.”

Village of Struthers v. George Sokel.

City of Youngstown v. John Sandela.

Supreme Court No. 17776 and 17777.

“1. Municipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of Section 3, Article XVIII of the Ohio Constitution, and derive no authority from, and are subject to no limitations of, the general assembly, except that such ordinances shall not be in conflict with general laws.

“2. In determining whether an ordinance is in conflict with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.

“3. A police ordinance is not in conflict with a general law upon the same subject merely because certain specific acts are declared unlawful by the ordinance, which acts are not referred to in the general law, or because certain specific acts are omitted in the ordinance but referred to in the general law, or because different penalties are provided for the same acts, even though greater penalties are imposed by the municipal ordinance.”

State vs. Ulm et al., 7 Ohio N. P., 659.

Emery vs. City of Elyria, 8 Ohio N. P. 208.

“4. Ordinances may be passed by cities and villages providing for the punishment of the same act which is made criminal by the statutes of Ohio, and offenders may be punished in both jurisdictions for the same act.”

Koch vs. The State, 52 O. S., 433:

“A former conviction before a mayor for the violation of an ordinance is not a bar to the prosecution of an information charging the same act as a violation of a statute.”

U. S. vs. Peterson et al., 268 Fed. 864.

City vs. City of Seattle, 270 Fed. 315.

Prohibition Ordinance is Constitutional:

City of East Liverpool vs. Dawson, No. 16474 Supreme Court of Ohio, O. L. Bull., July 26, 1820.

Silia vs. City of Canton, O. L. Bull., April 18, 1921. 23 N. P. (N. S.) 166.

Section 13527 reads as follows:

"If, on the examination, the magistrate finds that the accused has committed an offense of a higher grade than that charged, he may be held to answer therefor."

This statute is the only one bearing on this question and the word "may" is used instead of "must," making it discretionary with the court where the charge is filed under a state or federal law, but not mandatory.

The courts of a municipality do not have final jurisdiction in felonies.

In view of the above, it follows that a defendant may be tried under either the state law, federal law, or an ordinance, for manufacturing liquor.

If an ordinance makes it an offense to manufacture a distilled liquor, the courts of the municipality have final jurisdiction.

If the charge is for manufacturing a distilled liquor and it is brought under a state or federal statute the courts of a municipality do not have final jurisdiction, and should bind over or discharge the defendant under the usual rules in such proceedings.

If the charge is filed under a state or federal law and is of a less degree than a felony and it develops that a felony has been committed the court of the municipality may bind over to a court of competent jurisdiction, but the statute does not make such action mandatory.

Respectfully,

C. C. CRABBE,

Attorney-General.

934.

SALE OF STOCK—DEPARTMENT OF COMMERCE MAY LIMIT PROMOTION CHARGES TO LESS THAN FIFTEEN PER CENT—MAY REFUSE CERTIFICATE OF COMPLIANCE WHEN SALE IS ON GROSSLY UNFAIR TERMS.

SYLLABUS:—

1. *The Department of Commerce is vested with a broad discretion in the matter of the amount of commission and promotion charges to be allowed in the sales of stock by a broker and may limit such charges to less than fifteen per cent.*

2. *The Department of Commerce is vested with discretion in determining whether in any particular case stock is being offered on grossly unfair terms, and the amount of commission to be paid is one of the factors to be taken into consideration in deciding whether the terms are grossly unfair.*

3. *Section 6373-12 applies only to the issuance of stock of an insurance company. Section 6373-14a makes fifteen per cent the maximum of commission and promotion charges which may be allowed. Subject to that limit, the Department of Commerce has a broad discretion in determining whether stock is offered for sale under grossly unfair terms, and the amount of commissions and promotion charges to be paid is only one of the elements to be considered. It is the duty of the Department of Commerce to issue a certificate of compliance only when convinced, in view of all the facts, that the sale is not on grossly unfair terms.*

COLUMBUS, OHIO, November 28, 1923.

HON. CYRUS LOCHER, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date in which you submit the following statement of fact, accompanied by three inquiries, as follows: