

final disposition thereof. He shall deliver it to the prosecuting attorney and take his receipt forthwith therefor."

The duty of the prosecuting attorney is prescribed by Section 13548, General Code, as follows:

"The prosecuting attorney shall prosecute the recognizances by him received, for the penalty thereof. Such action shall be governed by the code of civil procedure as far as applicable."

As pointed out, *supra*, when the prosecuting attorney collects the money, he should then pay it into the county treasury.

Answering your question specifically, I am of the opinion that the money in question, as far as the state of Ohio is concerned was lawfully paid over to the county treasurer.

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

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577.

#### JUSTICE OF THE PEACE—JURISDICTION TO RENDER FINAL JUDGMENT IN CASES INVOLVING VIOLATIONS OF THE MOTOR TRUCK LAWS.

##### SYLLABUS:

*A justice of the peace is without jurisdiction to render a final judgment in cases involving a violation of Sections 7246, et seq., and 12603, et seq., General Code, unless as provided in Section 13511, General Code, the defendant in a writing subscribed by him waives the right of trial by jury and submits to be tried by said justice. If no such waiver be filed and a plea of not guilty be entered, the justice shall inquire into the complaint in the presence of the accused and if it appear that there is probable cause to believe the accused guilty, order the accused to enter into a recognizance to appear before a proper court of the county, viz., the probate court or the common pleas court. If no such waiver be filed and a plea of guilty be entered, the justice of the peace shall likewise bind the defendant over to the proper court.*

COLUMBUS, OHIO, June 6, 1927.

HON. G. C. SHEFFLER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date requesting my opinion on the questions asked in a letter which you enclose and which reads as follows:

"The sheriff of Sandusky county has requested each of the undersigned Justices of the Peace to issue warrants for the arrest of persons charged with violations of the Motor Truck Laws for overloading trucks used on the improved highways of this county. The offenses charged were misdemeanors, and under the present state of the law as interpreted by the U. S. Supreme Court in the *Tumey* case, and decisions of the courts of this state recently as to the jurisdiction of Justices of the Peace in misdemeanor cases, we have refused to issue warrants in the above mentioned cases. Were we justified, under the present state of the law as interpreted by the courts, in so refusing to act?

1. Have Justices of the Peace jurisdiction to issue warrants and hear cases in misdemeanors, on complaint by the sheriff, or his deputies, under the motor truck law, being Sections 7246 to 7251-1, or under the automobile law, being Sections 12603 to 12628-1 of the General Code?

2. Have Justices of the Peace jurisdiction in misdemeanors where imprisonment may be a part of the penalty, and where the right to a trial by jury is waived by the defendant in writing, to hear evidence and, if the defendant is found guilty, impose the penalty?

3. Where the plaintiff is a resident of the same township of the defendant, and sues the defendant before a Justice of the same township, it is our understanding of the law that in a CIVIL case the J. P. has no right to demand security for costs in a CIVIL case. The plaintiff is wholly insolvent. If the Justice of the Peace receives any compensation for his services it must come from the defendant. In such a civil case, where the amount involved is less than one hundred dollars, has a justice of the peace jurisdiction to hear and determine such a case, without depriving such a defendant of due process of law as guaranteed by the 14th Amendment to the Constitution of the United States?

Violations of The Pure Food and Drug Law, the Building Code, Cruelty to Children and Animals, the employment of children and the various and varied offenses thereunder are liable to be brought before us at any time. We are uncertain of our duties and ask you for instruction."

1. In answer to that portion of your first question relating to the jurisdiction of justices of the peace in cases involving a violation of sections 7246 to 7250, General Code, your attention is directed to section 13421-17, General Code, which provides:

"Whoever violates any of the provisions of sections 7246 to 7250 inclusive, of the General Code shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars for the first offense, and for each subsequent offense shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned not more than ninety days, or both fined and imprisoned."

and to section 13421-21, General Code, which provides:

"All courts of competent jurisdiction, including police judge, mayors of villages and cities, shall have jurisdiction as provided by law in all cases of violation of any of the sections contained in this act."

No section of the General Code confers final jurisdiction in justices of the peace in this class of offenses. To determine the procedure in misdemeanor cases other than those over which a justice of the peace has special or final jurisdiction, reference must be first had to the provisions of sections 13510 and 13511, General Code.

It is provided in the former section that when a person charged with a misdemeanor *upon complaint of the party injured* enters a plea of guilty thereto a magistrate shall sentence him to such punishment as he may deem proper according to law; but if the complaint is not made by the party injured and the accused pleads guilty, such magistrate shall require the accused to enter into a recognizance to appear in the proper court as is provided when there is no plea of guilty.

What is meant in section 13510 by the term "party injured" is defined by the supreme court of Ohio in the case of Hanaghan vs. State, 51 O. S. 24, wherein the court said:

"If every citizen of the state, or member of the community where the offense is committed, is included in those descriptive words, this proceeding in error is without merit. But it is evident they were not used in the statute in that sense. They refer, we think, to the person who suffers some particular injury from the commission of the offense, either in his person, property or reputation, as distinguished from that which results to the general public or local community."

It is apparent that an offense under the so-called "Motor Truck Law" is not in the class of misdemeanors in the commission of which there may be an "injured party," in the sense as above defined by the court.

It follows, therefore, that when a complaint is made before a justice of the peace under section 13421-17, supra, he has no jurisdiction upon a plea of "guilty" or a plea of "not guilty" to impose the penalty of the law, but is required, as provided in section 13510 and 13511, General Code, to order the defendant to enter into a recognizance for his appearance before the proper court, unless said defendant, before or during examination should in writing waive the right of a trial by jury and submit to be tried by the magistrate as provided in section 13511, General Code.

Without quoting in full the provisions of section 13511, General Code, it is sufficient to say that in cases of misdemeanor, other than those over which by the terms of section 13423 and other sections of the General Code, a justice of the peace has final jurisdiction, it permits the accused to waive, in a writing subscribed by him and filed before or during the examination, the right of trial by jury and to submit to be tried by the magistrate. When the accused acts in accordance with these provisions of section 13511, General Code, the justice of the peace is vested with jurisdiction to hear the cause and render final judgment.

To this effect see Vol. II, Opinions, Attorney General, 1919, page 1503, the second paragraph of the syllabus of which reads:

"Justices of the peace are vested with examining jurisdiction only, and not with final jurisdiction, in the matter of violations of sections 7246 to 7249, General Code."

In this opinion Attorney General Price used the following language:

"You have also requested an opinion as to whether justices of the peace have final jurisdiction of offenses under section 13421-17 G. C. That section, as has been seen, makes the violation of section 7248, G. C., a misdemeanor punishable by fine. As part of the act in which section 13421-17 appears, there is also found section 13421-21, reading as follows:

'All courts of competent jurisdiction, including police judges, mayors of villages and cities, shall have jurisdiction as provided by law in all cases of violation of any of the sections contained in this act.'

Clearly, there is not in this section any affirmative grant to justices of the peace of final jurisdiction, whatever may have been the intent of the legislature in that respect. That expression 'including police judges, mayors of villages and cities' is an excrescence, since the final jurisdiction of these officers in misdemeanor cases had already been defined by sections 4577, 4536 and 4528, respectively. As compared with the broad provisions of the three sections just named, limited provision is made in section 13423 G. C. for final jurisdiction in justices of the peace in certain classes of cases. However, there is not to be found in the last named section any reference to final jurisdiction in road traffic violations, nor has any provision been found elsewhere in the General Code conferring final jurisdiction in such matters upon justices

of the peace. Hence, we are reverted to sections 13510 and 13511 G. C. in the matter of jurisdiction of justices of the peace as to violations of sections 7246 to 7249 G. C., and as there is no authority vested in a justice of the peace to accept a plea of guilty as to such violations because there is no way by which the complaint may be filed by the 'party injured' as those words are used in section 13510, it follows that the only jurisdiction vested in a justice of the peace as to violations of said sections 7246 to 7249 is solely an examining, and not a final jurisdiction."

The foregoing observations are equally applicable and determinative of prosecutions instituted under sections 12603, et seq., General Code.

In this connection your attention is directed to a former opinion of this office which appears in Vol. II, Opinions, Attorney General, 1916, page 1437, the first paragraph of the syllabus of which reads:

"When a plea of guilty is made before a justice of the peace to a charge of violating the provisions of section 12604 G. C., said justice is without jurisdiction to render a final judgment therein unless the defendant in a writing subscribed by him waives the right of trial by jury and submits to be tried by said justice as provided by section 13511 G. C. The provisions of section 13510 G. C. in respect to the jurisdiction conferred upon justices in cases where a complaint is filed by an injured party are not applicable to prosecutions under said section 12604, supra, for the reason that violations of said last named section are not in the class of misdemeanors in the commission of which there may be an injured party as contemplated by said section 13510, supra."

Although this opinion relates to former section 12604, General Code, the reasoning and substance thereof is equally applicable to sections 12603, et seq., General Code.

Summarizing and answering your first question specifically it is my opinion that if a complaint charging a violation of sections 7246, et seq., or 12603, et seq., General Code, be filed before a justice of the peace and the accused pleads "guilty", the justice of the peace shall require the accused to enter into a recognizance to appear in the proper court of said county, viz., either the probate or the common pleas court. If the accused pleads "not guilty", the justice of the peace shall inquire into the complaint in the presence of the accused and if it appear that an offense has been committed and that there is probable cause to believe the accused guilty, order the accused to enter into a recognizance to appear before the proper court of the county, viz., the common pleas court or the probate court.

In either event, if the accused, in a writing subscribed by him and filed before or during the examination waive a jury and submit to be tried by the magistrate, the justice of the peace may render final judgment. While the filing of such a waiver seems unnecessary for a "first offense" violation of sections 6246 to 7250, General Code, because the accused would in no event be entitled to a jury trial inasmuch as the penalty therein provided is only a fine, unless such waiver be filed as above indicated, a justice of the peace is without jurisdiction finally to hear and determine the cause.

2. Your second inquiry is answered in the affirmative. As stated in answer to your first question, if the provisions of section 13511, General Code, are complied with, and if the accused in a writing subscribed by him and filed before or during the examination, waive a jury and submits to be tried by the magistrate, the justice of the peace may render final judgment. It is my opinion that by filing such a waiver, the defendant voluntarily submits his person to the jurisdiction of the court. The decision of the United States Supreme Court in the case of *Tumey vs. State of Ohio*,

would not apply in such a case because the defendant, by his own act, waives any objection that he might have made to the qualification of the magistrate that may exist because of pecuniary interest to hear and determine the cause. The court having both jurisdiction of the subject matter and of the person of the defendant could therefore render final judgment.

3. The subject matter involved in your third inquiry involves the private rights of litigants in civil actions and is not a matter in which the state is directly or indirectly interested and I, therefore, do not deem it proper here to express my opinion thereon.

4. In the last paragraph of your letter you list a number of offenses over which, as provided in section 13423, General Code, a justice of the peace, police judge or mayor has final jurisdiction within their respective counties.

In this connection your attention is directed to Opinion No. 392, dated April 27, 1927, Opinions, Attorney General, 1927, which in substance states:

“Justices of the peace have final jurisdiction in cases involving those classes of offenses enumerated in Section 13423, General Code, except where a felony is charged. In these classes of cases if no security for costs be demanded from complainant under the provisions of Section 13499, General Code, and the defendant raises seasonable objection to the qualification of the justice of the peace because of his direct, substantial, pecuniary interest in the outcome, such objection should be sustained and the complaint withdrawn and filed in a proper court where such disqualification does not exist. If, as provided in Section 13499, General Code, the costs are secured, no such interest exists and therefore, an objection may be properly overruled and final judgment rendered.”

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

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578.

INHERITANCE TAXATION—HOUSE BILL NUMBER 136 HAS NO APPLICATION TO SUCCESSIONS TO ESTATE OF DECEDENTS DYING PRIOR TO EFFECTIVE DATE OF SAID BILL.

*SYLLABUS:*

*House Bill No. 136 providing for the reciprocity in inheritance taxation, passed March 22, 1927, and effective June 30, 1927, has no application to successions to estates of decedents dying prior to the effective date of such act.*

COLUMBUS, OHIO, June 6, 1927.

*Tax Commission of Ohio, Columbus, Ohio.*

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

“Enclosed we send you a copy of the act providing for reciprocity in inheritance taxation as passed at the recent session of the General Assembly and to become effective June 30, 1927.

Some doubt exists in the mind of the commission as to the extent to which this act will apply to cases where the death will have taken place prior