

I am therefore returning to you the above lease without my approval endorsed thereon.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

1664.

JURY CODE—MANNER OF DRAWING JURORS BEFORE MAGISTRATES' COURTS NOT PROVIDED FOR THEREIN.

SYLLABUS:

By virtue of the express provisions of section 11419-39, General Code, the so-called Jury Code does not provide the manner of drawing jurors before magistrates' courts. In criminal cases in which the magistrate has final jurisdiction, the jury is selected in accordance with sections 13424-1, et seq., General Code.

COLUMBUS, OHIO, October 2, 1933.

HON. PAUL T. KLAPP, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent request for my opinion, which reads as follows:

“May I have your opinion upon the following subject: Under G. C. 13424-1 and 2, when a Jury Trial is demanded before a magistrate, the magistrate must certify the fact to the Clerk of Courts who was empowered to draw a jury and to certify same to the magistrate. In a case which arose a jury was demanded before a magistrate who certified same to the Clerk, but the Clerk stated that since the new Jury Code was in effect, he had no authority to draw such jury. These questions then arise. In consideration of the sections above cited, and the new jury code:

1. Does the Clerk of Court now have the authority under the old procedure to draw such jury for a magistrate's court in accordance with G. C. Sections 13424-1 and 2?

2. May the magistrate now certify the necessity of a jury trial in his court to the Jury Commissioners and have they the power then to draw such jury?

Your opinion in this regard will be greatly appreciated as it becomes very important particularly since the passage of G. C. 13443.”

The new Jury Code referred to in your letter was enacted by the 89th General Assembly and is known as Amended Senate Bill No. 184. This bill enacted sections 11419-1, et seq. It deals with the method of summoning and selecting jurors. However, this Jury Code does not have any effect upon inferior courts such as referred to in your letter. I call your attention to section 11419-39, General Code, which reads as follows:

“Nothing in this act contained shall contravene or affect any section of the General Code relating to jurors in the inferior courts in any county of the state.”

Under the comment to this section in Page's Ohio Code, the following is stated:

"The inferior courts contemplated by this section are the following, municipal, police, mayor, justice of the peace, et seq., for which local or state provisions are made for the selecting, drawing and summoning of jurors."

In 24 O. Jur., 136, the following appears:

"The Jury Code provides that nothing contained in the act shall contravene or affect any section of the General Code relating to jurors in the inferior courts in any county of the state."

In your letter you refer to sections 13424-1 and 13424-2, General Code. These sections provide for the selection of a jury in a criminal case before a magistrate who has final jurisdiction to hear the case. These sections read as follows:

Sec. 13424-1.

"In prosecutions before a magistrate, when imprisonment is a part of the punishment, if a trial by jury is demanded, the magistrate, not less than three days nor more than five days before the time fixed for trial, shall certify to the clerk of the court of common pleas of the county that such prosecution is pending before him. Failure to demand a jury as in this section provided, shall be deemed a waiver of the same."

Sec. 13424-2.

"Thereupon the clerk shall draw from the jury wheel containing the names of persons selected to serve as petit jurors in the court of common pleas in such county, twenty names which shall be drawn and counted in a like manner as for jurors in the court of common pleas. The clerk shall forthwith certify the names so drawn, to the magistrate, who, thereupon shall issue to any constable, chief of police or marshal in the county, a venire containing the names of the persons to serve as jurors in the case and make due return thereof."

The above quoted sections make use of the term "magistrate". That term as used in these sections is defined by section 13422-1, General Code, as follows:

"For the purposes of this title, the word 'magistrate' shall be held to include justices of the peace, police judges or justices, mayors of municipal corporations and judges of other courts inferior to the court of common pleas."

It is obvious that sections 13424-1 and 13424-2, General Code, are in no way affected by the Jury Code.

This office, in an opinion to be found in Opinions of the Attorney General for 1931, Vol. II, page 1103, was called upon to construe the new Jury Code. It was held in that opinion, as disclosed by the syllabus:

"1. Amended Senate Bill No. 184 of the 89th General Assembly, known as the 'Jury Code', becomes effective August 2, 1931, in so far as

it directs the appointment of jury commissioners in compliance therewith within thirty days after its effective date, although the jury list to be compiled in accordance with the act does not constitute the regular jury list from which jurors for service are to be selected until the jury year beginning August 1, 1932.

2. Until the jury year beginning August 1, 1932, grand and petit jurors for service in courts of record shall continue to be drawn and summoned and shall serve as now provided by law. Thereafter, they shall be drawn and notified, and shall serve as prescribed by the 'Jury Code' as enacted by the 89th General Assembly.

3. All statutes inconsistent with the 'Jury Code' are either expressly or impliedly repealed."

There is nothing in that opinion inconsistent with the conclusion reached here. The question in that opinion was answered expressly with reference to the common pleas court.

In view of the conclusion reached in reference to your first question, it is unnecessary to answer your second question.

It is therefore my opinion that by virtue of the express provisions of section 11419-39, General Code, the so-called Jury Code does not provide the manner of drawing jurors before magistrates' courts. In criminal cases in which the magistrate has final jurisdiction, the jury is selected in accordance with sections 13424-1, et seq., General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1665.

APPROVAL, NOTES OF RUSSELLVILLE-JEFFERSON VILLAGE
SCHOOL DISTRICT, BROWN COUNTY, OHIO—\$5,687.00.

COLUMBUS, OHIO, October 2, 1933.

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

1666.

APPROVAL, NOTES OF NASHVILLE RURAL SCHOOL DISTRICT,
HOLMES COUNTY, OHIO—\$1,391.00.

COLUMBUS, OHIO, October 2, 1933.

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