

1651.

APPROVAL—BONDS OF WELLSTON CITY SCHOOL DISTRICT, JACKSON COUNTY, OHIO, \$70,000.00 (Unlimited).

COLUMBUS, OHIO, December 18, 1937.

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

GENTLEMEN :

RE: Bonds of Wellston City School Dist., Jackson County, Ohio, \$70,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise all of an issue of school building bonds dated January 1, 1938, bearing interest at the rate of $3\frac{1}{4}\%$ per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1652.

JUSTICE OF THE PEACE OF HAMILTON COUNTY—JURISDICTION IN CIVIL AND CRIMINAL PROCEEDINGS—COUNTY-WIDE JURISDICTION, WHEN—CONCURRENT JURISDICTION—MUNICIPAL COURT.

SYLLABUS:

1. *Under Section 1658-41, General Code, justices of the peace in Hamilton County are limited in their jurisdiction in civil and criminal proceedings to the township in which they are elected and reside.*

2. *Section 13422-2, General Code, as amended and effective August 20, 1937, limits the jurisdiction of justices of the peace in criminal cases to the township in which they are elected and reside, except when they are given county wide jurisdiction because the affidavit or complaint is filed by the prosecuting attorney, sheriff, the party injured or any author-*

ized representative of a state or federal department. However, regardless of who files the affidavit or complaint, the jurisdiction of justices of the peace in criminal cases is limited by Section 13422-2, General Code, to the townships in which they are elected and reside, "when there is a court of concurrent jurisdiction," other than the common pleas court, police court or mayor's court, available for said purpose.

3. Municipal courts are construed to be "courts of concurrent jurisdiction," as that term is used in Section 13422-2, General Code, as amended and effective August 20, 1937, so as to give such municipal courts concurrent jurisdiction with that of justices of the peace for the handling and disposition of cases arising within the territorial limits of a county.

COLUMBUS, OHIO, December 20, 1937.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your letter of recent date, which reads as follows:

"The Tax Commission requests your opinion on the interpretation of Section 13422-2, outlining the general jurisdiction of the Justices of the Peace. The section was amended effective August 20, 1937. From time to time agents of the State Tax Commission have occasion to file affidavits or complaints against Sales and Use Tax violators.

1. Under this section may agents of the State Tax Commission file affidavits or complaints in Justice Court if the alleged violation occurred within the corporate limits of the City of Cincinnati?

2. May affidavits be filed in the Justice Court when the alleged violation occurred outside the corporate limits of the City of Cincinnati but within the corporate limits of a village or municipality?

3. May affidavits be filed in the Justice Court when the alleged violation occurred in the county but outside the corporate limits of any city, village or municipality?

4. May affidavits be filed in any Justice Court within the county when the alleged violation occurred outside the corporate limits of the city, village or municipality, and also outside the township for which the Justice was elected?"

Section 13422-2, General Code, as amended by the 92nd General Assembly, effective August 20, 1937, reads in part as follows:

“A justice of the peace shall be a conservator of the peace and have jurisdiction in criminal cases throughout the township in which he is elected and where he resides, and county wide jurisdiction in all criminal matters only upon affidavit or complaint filed by the prosecuting attorney or upon affidavit or complaint made by the sheriff, the party injured or any authorized representative of a state or federal department, in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court or mayor’s court, and on view or on sworn complaint, to cause a person charged as aforesaid with the commission of a felony or misdemeanor, to be arrested and brought before himself or another justice of the peace, and, if such person is brought before him, to inquire into the complaint and either discharge or recognize him to be and appear before the proper court at the time named in such recognizance or otherwise dispose of the complaint as provided by law. He may also hear complaints of the peace and issue search warrants. Provided that justices of the peace shall have county wide jurisdiction on sworn complaint to issue a warrant for the arrest of a person charged with the commission of a felony where it is made to appear that such person has fled or is without the state and it is necessary or desirable to extradite such person. Provided, further, however, that justices of the peace shall have jurisdiction within their respective counties in all cases of violation of any law relating to: * * ” (Here follows a list of eighteen separate offences dealing with adulteration of foods, conservation laws, etc.)

Under this amendment, the general jurisdiction of justices of the peace, in criminal cases, was changed from “throughout the county” to “throughout the township” in which the justice of the peace is elected and where he resides. The other particular changes, in this section, in which we are interested in this opinion, are as follows:

“* * and county wide jurisdiction in all criminal matters only upon affidavit or complaint filed by the prosecuting attorney or upon affidavit or complaint made by the sheriff, the party injured or any authorized representative of a state or federal department, in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court or mayor’s court, * *”

A careful reading of this section as amended, discloses that a justice of the peace does not have general county wide jurisdiction in criminal matters, except when the affidavit or complaint is *filed* by the prosecuting attorney or upon affidavit or complaint *made* by the sheriff, the party injured, or any authorized representative of a state or federal department. And further, it must be noted that a justice of the peace does not have county wide jurisdiction in criminal cases except "*in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court or mayor's court.*" (Apparently, this exception was put in to give municipal courts created by special statutes, specific jurisdiction in the handling of criminal cases within a given territory provided by the statute creating such municipal court.) In your first question you ask:

"1. Under this section may agents of the State Tax Commission file affidavits or complaints in Justice Court if the alleged violation occurred within the corporate limits of the City of Cincinnati?"

In my opinion, agents of the State Tax Commission come under the provision, contained in Section 13422-2, *supra*, which authorizes any authorized representative of a state or federal department to make and file an affidavit or complaint before a justice of the peace so as to give such justice county wide jurisdiction.

The City of Cincinnati has been granted the power, under Sections 1558-1 to 1558-45, inclusive, of the General Code, to create and maintain "the Municipal Court of Cincinnati."

Section 1558-6, General Code, provides in part, as follows:

"The Municipal Court of Cincinnati shall have the same jurisdiction in criminal matters and prosecutions for misdemeanors or violations of ordinances as heretofore had by the police court of Cincinnati. * *"

Section 1558-6a, General Code, provides in part, as follows:

"The Municipal Court (Cincinnati) shall have jurisdiction within the limits of the county of Hamilton:

(a) to compel the attendance of witnesses in any pending action or proceeding;

* * *

* * *

(d) In actions and proceedings where one or more defendants reside or are served with summons in the City of Cincinnati;

* * * * *

(f) In all actions, criminal, quasi-criminal, civil and preliminary hearings, in which justices of the peace have or may be given jurisdiction co-extensive with the county in which they are elected and preside. * *"

(Parenthesis, the writer's.)

Section 1558-41, General Code, provides :

"No justice of the peace in any township in Hamilton County, other than in Cincinnati Township, nor mayor of any village or city in any proceeding, whether civil or criminal in which any warrant, order of arrest, summons, order of attachment or garnishment or other provisions except subpoena for witnesses, shall have been served upon a citizen or resident of Cincinnati or a corporation having its principal office in Cincinnati, shall have jurisdiction, unless such service be actually made by personal service within the township, village or city in which said proceedings may have been instituted or in a criminal matter unless the offense charged in any warrant or order of arrest shall be alleged to have been committed within said township, village or city."

Section 1558-43, General Code, provides for the abolishment of justices of the peace and constables in Cincinnati Township, Hamilton County, Ohio, on and after January 1, 1916. There have been no justices of the peace or constables in Cincinnati Township since the above date.

It should be noted that Section 1558-41, supra, specifically states :

*"No justice of the peace in any township in Hamilton County * * nor mayor of any village or city in any proceeding, whether civil or criminal in which any warrant, order of arrest, summons, * * or other process except subpoena, for witnesses * * shall have jurisdiction, in a criminal matter unless the offense charged in any warrant or order of arrest shall be alleged to have been committed within said township, village or city."*

This section was apparently adopted for the purpose of giving the Municipal Court of the city of Cincinnati exclusive jurisdiction in the handling of criminal offenses which are alleged to have occurred within the corporate limits of the city. I therefore, do not believe that any justice of the peace in any township in Hamilton County has jurisdiction over any person charged with a criminal offense alleged to have been committed within the corporate limits of the City of Cincinnati. It should also be noted that the question of the extent of the jurisdiction of justices of the peace in Hamilton County has been passed on in the case of *In re Application of George Hesse for Writ of Habeas Corpus*, 93 O. S., 230, decided December 11, 1915. In that case the court held as per the syllabus:

“Section 41 (Section 1558-41, General Code) of the act establishing a municipal court in the city of Cincinnati, limiting the jurisdiction of a justice of the peace in any township of Hamilton county other than Cincinnati township in criminal matters, was not repealed by the act passed April 28, 1913 (103 O. L., 539), amending Section 13423, General Code.” (Section 13423 is now a part of Section 13422-2, G. C., as amended August 20, 1937.)

In this case George Hesse, a citizen and resident of Cincinnati Township, Hamilton County, Ohio, was arrested in that township by Charles L. Timberlake, a constable for Millcreek Township in that county. The misdemeanor was alleged to have been committed in Cincinnati Township. The affidavit was filed with the justice of the peace in Millcreek Township, by whom the warrant was issued. On habeas corpus proceedings the defendant was released by the Common Pleas Court upon the ground that the justice of the peace had no authority to issue the warrant for arrest and no jurisdiction over the alleged offense. The judgment of the Court of Common Pleas was affirmed by the Court of Appeals.

The statement of facts in the Hesse case, *supra*, further shows that the Municipal Court Act of Cincinnati (103 O. L., 279) was filed with the Secretary of State on May 2, 1913, and that it was effective ninety days thereafter. Section 41 of the Act (Section 1558-41, G. C.) limited the jurisdiction of justices of the peace in criminal matters, in Hamilton County, to their own townships. The statement of facts further shows that on May 9, 1913, there was filed with the Secretary of State, an Act (103 O. L., 539) amending Section 13423, General Code (now a part of Section 13422-2, G. C.) effective ninety days thereafter, which act gave justices of the peace county wide jurisdiction in fifteen various

enumerated classes of cases. Relative to this situation, the court, in its opinion said:

“It is the contention of counsel for respondent that this section, as amended, takes precedence over and repeals the provisions of the municipal court act in so far as they are in conflict with the section; that provisions of the municipal court act denying to a justice of the peace outside of Cincinnati Township in Hamilton County jurisdiction over offenses committed in Cincinnati Township, are therefore repealed, and that these justices of the peace have concurrent jurisdiction, at least, with the municipal court.

It is settled that where there are contradictory provisions in statutes and both are susceptible of reasonable construction which will not nullify either, it is the duty of the court to give such construction, and further, that where two affirmative statutes exist one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation.

* * * * *

These two sections of the municipal court act were intended by the general assembly as an exception to the general provisions of Section 13423. That body, it must be assumed, had knowledge of the provisions of the municipal court act, and if it had intended that amended Section 13423, should repeal them, it would have been easy, in unequivocal language, to make that provision plain.

* * * * *

We conclude, therefore, that Section 41, of the municipal court act has not been repealed, but is in full force and effect, and that *the justice of the peace in the case at bar had no jurisdiction to issue a warrant for the arrest of the petitioner nor jurisdiction over the alleged offense.*”

(Italics, the writer's.)

Therefore, in specific answer to your first question it is my opinion that, there is no authority, under Section 13422-2, of the General Code of Ohio, for agents of the State Tax Commission to file affidavits or complaints in the court of any justice of the peace in Hamilton County, for alleged violation of any laws with which the State Tax Commission is charged with enforcement, if the alleged offense occurred within the corporate limits of the City of Cincinnati. Under the provisions of

Section 1558-41, General Code, the Municipal Court of the City of Cincinnati is given exclusive jurisdiction to issue warrants or orders of arrest in all cases where the offense is alleged to have been committed within the corporate limits of the City of Cincinnati or within Cincinnati Township, Hamilton County, Ohio.

In your second question you ask:

“May affidavits be filed in the Justice Court when the alleged violation occurred outside the corporate limits of the City of Cincinnati but within the corporate limits of a village or municipality?”

In response to this question, and from a review of the authorities heretofore cited, it is my opinion that, affidavits for warrant may be filed by duly authorized representatives of the State Tax Commission, before any justice of the peace in Hamilton County providing such affidavit is filed with a justice in the township where the alleged offense occurred. This is true, regardless of whether or not the alleged offense occurred within the corporate limits of a village or municipality with the exception of course, that it did not occur within the corporate limits of the city of Cincinnati.

In your third question, you ask:

“May affidavits be filed in the Justice Court when the alleged violation occurred in the county but outside the corporate limits of any city, village or municipality?”

This question can also be answered in the affirmative providing the affidavit is filed before a justice of the peace in the township where the alleged offense occurred. This answer is applicable in particular to Hamilton County, where there is a municipal court in the City of Cincinnati which has county wide jurisdiction in all criminal matters. Under such circumstances the Municipal Court of Cincinnati qualifies as a court of “concurrent jurisdiction,” as that term is used in Section 13422-2, supra, and therefore limits the criminal jurisdiction of all justices of the peace in Hamilton County in all cases and circumstances to the township in which they are elected or appointed, and reside.

If, however, there is no court of “concurrent jurisdiction,” other than the Common Pleas Court, police court or mayor’s court, in any county of the state, with that of justices of the peace, then and in that event justices of the peace have county wide jurisdiction over any and all criminal cases where the affidavit or complaint charging the offense

is filed by the prosecuting attorney or sheriff of the county, the party injured or a duly authorized representative of a state or federal department. Otherwise, the jurisdiction of justices of the peace is limited to the township in which they are elected or appointed and reside.

In your fourth question you ask:

“May affidavits be filed in any Justice Court within the county when the alleged violation occurred outside the corporate limits of the city, village or municipality, and also outside the township for which the Justice was elected?”

Again, my answer to this question is in the affirmative, providing the affidavit or the complaint is filed by the prosecuting attorney, sheriff, party injured or any authorized representative of a state or federal department.

However, it must be noted further, that a justice of the peace does not have jurisdiction outside of his township if there is a court of “concurrent jurisdiction” available in which the affidavit can be filed other than the Common Pleas Court, police court or mayor’s court. This is particularly applicable to the counties of Ohio in which there are now located one or more municipal courts which by special act of the legislature are given special jurisdiction usually co-extensive with the county in which they are located. In such event these municipal courts, so created, are deemed to be courts of “concurrent jurisdiction” and will therefore assume and have such exclusive county wide jurisdiction over all criminal matters as will prevent justices of the peace from assuming any jurisdiction over any such cases outside of the township in which they are elected or appointed, and reside.

Therefore, in summarizing the information requested in your inquiry, it is my opinion that:

1. Under Section 1558-41, General Code, justices of the peace in Hamilton County are limited in their jurisdiction in civil and criminal proceedings, to the *township* in which they are elected and reside.

2. Section 13422-2, General Code, as amended and effective August 20, 1937, limits the jurisdiction of justices of the peace in criminal cases to the township in which they are elected and reside except when they are given county wide jurisdiction because the affidavit or complaint is filed by the prosecuting attorney, sheriff, the party injured or any authorized representative of a state or federal department. However, regardless of who files the affidavit or complaint the jurisdiction of justices of the peace in criminal cases is limited, by Section 13422-2, General Code, to the townships in which they are elected and reside, “*when there is a court of concurrent jurisdiction,*” other than the com-

mon pleas court, police court or mayor's court, available for such purpose.

3. Municipal courts are construed to be "courts of concurrent jurisdiction" as that term is used in Section 13422-2, General Code, as amended and effective August 20, 1937, so as to give such municipal courts concurrent jurisdiction with that of justices of the peace for the handling and disposition of cases arising within the territorial limits of a county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1653.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT,
LUCAS COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, December 21, 1937.

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

GENTLEMEN:

RE: Bonds of Toledo City School Dist., Lucas County,

Ohio, \$5,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above school district dated June 1, 1927. The transcript relative to this issue was approved by this office in an opinion rendered to your board under date of November 20, 1933, being Opinion No. 1886.

It is accordingly my opinion that these bonds constitute a valid and legal obligation of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.