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FELONY OR MISDEMEANOR—COMPLAINTS OF THE PEACE
—SEARCH WARRANTS—ANY OF THE PERSONS NAMED IN
SECTION 13422-2 G. C. MAY FILE AFFIDAVIT WITH JUSTICE
OF THE PEACE IN ANY TOWNSHIP—PROVISO, UNLESS
THERE IS IN THE COUNTY A COURT OTHER THAN COM-
MON PLEAS COURT, POLICE COURT OR MAYOR'S COURT—
JURISDICTION—OFFENSES—O. A. G. 1938, PAGE 131, AP-
PROVED.

SYLLABUS:

Under the provisions of Section 13422-2, General Code, any of the persons named therein may file an affidavit or complaint charging a person with the commission of a felony or misdemeanor and may file the same with a justice of the peace in any township, unless there has been established within the county a court other than the common pleas court, police court or mayor's court, which has jurisdiction of such offense. Opinion No. 1791, Opinions of the Attorney General for 1938, page 131, approved.

Columbus, Ohio, December 29, 1952

Hon. Harold K. Bostwick, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

I have before me your letter requesting my opinion and reading as follows:

"All the townships in Geauga County have one or more justices of the peace. There are no other courts in the county except common pleas, probate and mayors. However, it is more convenient in criminal cases for the sheriff to make his affidavit before a justice of the peace here in Chardon Township and for me as Prosecutor, to file the affidavit when I so desire, before a justice of the peace here in Chardon Township, as that is where both of our offices are located, rather than for him and I to make and file the affidavit in the township where the alleged crime was committed.

"Now, my question for your opinion under Section 13422-2 is:

"1. If the Sheriff makes the complaint, and the alleged crime took place in H. Township, can the sheriff file the

affidavit before a justice of the peace in C. Township or must he file it in H. Township, only?

"2. Does a justice of the peace of 'C' Township have county wide jurisdiction on a complaint filed by the Prosecuting Attorney, upon affidavit made by the sheriff, etc., the alleged crime took place in 'H' Township and there is a justice of the peace in 'H' Township before whom the sheriff could make the affidavit and before whom the Prosecutor could file the affidavit?

"Since your predecessor's Opinion No. 1791, the case of State vs. Williams, 59 Abs., page 435, has been decided. I would like your present opinion in the matter."

Prior to its latest amendment, Section 13422-2, General Code, was a part of an Act, "To revise and codify the Code of Criminal Procedure of Ohio" passed April 1, 1929, and found in 113 Ohio Laws, page 123. As then enacted, Section 13422-2 read as follows:

"A justice of the peace shall be a conservator of the peace and have jurisdiction in criminal cases throughout the county in which he is elected and where he resides, on view or on sworn complaint, to cause a person, charged 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 also may hear complaints of the peace and issue search warrants."

In 117 Ohio Laws, page 586, Section 13422-2 was amended to its present reading, 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. * * **

(Emphasis added.)

Here follows the enumeration of special cases formerly set out in Section 13422-3, General Code, in which magistrates are given county wide jurisdiction. The portion emphasized was added to the section by the amendment. Otherwise it was unchanged. In an opinion by one of my predecessors, being No. 1652, Opinions of Attorney General for 1937, page 2684, it was held :

“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 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.”

Referring to the language relative to the existence of a court of concurrent jurisdiction it was said :

“Apparently this exception was put in to give municipal courts created by special statutes, specific jurisdiction in the handling of criminal cases within the given territory provided by the statute creating such municipal court.”

In Opinion No. 1791, Opinions of the Attorney General for 1938, page 131, the same Attorney General held:

“A justice of the peace (excepting in those eighteen special enumerated cases contained in Section 13422-2 of the General Code), upon the filing of an affidavit or complaint by a prosecuting attorney or upon affidavit or complaint made by a sheriff, the party injured, or any authorized representative of a state or federal department charging the commission of a misdemeanor committed in a township other than where the affidavit was filed or made, assumes by virtue of Section 13422-2 of the General Code, county-wide jurisdiction to hear and determine the case in the manner prescribed by law, provided, however, there is not existent in the county where such justice of the peace is elected and resides a municipal court exercising county-wide jurisdiction.”

Referring to the section as amended, the then Attorney General used this language:

“Such county-wide criminal jurisdiction of a justice of the peace *is only abridged in those counties wherein it appears that a court other than the common pleas, police or mayor's court, has been established vested with concurrent jurisdiction.*

“By excepting as courts of concurrent jurisdiction, the common pleas, police or mayor's courts, it is apparent that under our present judicial system the only other court which might be established vested with jurisdiction coextensive with a justice of the peace in criminal matters would be in the event of the establishment within the various counties of the state of municipal courts.”
(Emphasis added.)

In State ex rel. Williams vs. Gillette, 59 Abs., 435, decided by the Common Pleas Court of Lawrence County, it was held:

“A justice of the peace has county-wide jurisdiction in criminal matters under Section 13422-2, General Code, only to the extent there is no court in the township where the offense is committed, similar to a justice of the peace.”

The court, after quoting Section 13422-2 uses this language:

“If we understand this statute, a justice of the peace has county wide jurisdiction in criminal matters only in the event there is no court *in the township where the offense is committed similar to a justice of the peace*, or to use the language of the statute, of concurrent jurisdiction. It is admitted in this case

that there are justices of the peace in the other two townships where the offenses are alleged to have been committed and therefore the justice of the peace in Fayette Township, under this statute, has no authority to assume jurisdiction of an alleged offense committed in Union and Rome Townships."

(Emphasis added.)

This appears to me to be an over-simplification of the very abstruse language of the statutory provision. And, in injecting the words, "in the township where the offense was committed" the court appears to have read into the statute something that is not expressed in the law. The legislature in enacting this statute, must certainly be presumed to have known that each of the townships in every county of the state is provided with at least one justice of the peace, and that they all have precisely the same jurisdiction. As a matter of fact, Section 1711-1, General Code, requires the establishment of an office of the justice of the peace in every township in the state, "except townships in which a court other than a mayor's court now exists, or may hereafter be created having jurisdiction of all cases of which justices of the peace have or may have jurisdiction." This exception evidently relates to a municipal court or some similar court which has been given jurisdiction of all cases that ordinarily fall within the authority of a justice of the peace.

Accordingly, if the court, in the case above noted, is correct in its conclusion, the elaborate provision of Section 13422-2, General Code, appears to be foolish and meaningless. The practical result of the reasoning of the court is that a justice of the peace never has county-wide criminal jurisdiction, except in the eighteen special cases mentioned in the latter part of the statute, even where the complaint is filed by the sheriff or prosecuting attorney. Such conclusion would certainly not be tenable. It contradicts the express language of said Section 13422-2 and is directly contrary to the statement of the Supreme Court in the case of *State ex rel Michael v. Vamos*, 144 Ohio St., 628, which held:

"1. By the provisions of Section 13422-2, General Code, a justice of the peace is granted conditional county-wide jurisdiction in all criminal matters upon affidavit or complaint filed by the prosecuting attorney, the sheriff, the party injured or any authorized representative of a state or federal department."

It appears to me that the General Assembly in using this elaborate and roundabout phraseology, and particularly in the use of the words,

"of concurrent jurisdiction," had reference not to justices of the peace, but to some other court to which county-wide criminal jurisdiction has been or may be given.

If the statute in question, instead of saying, "a justice of the peace" had used the words "all justices of the peace," then it would seem clear that the words "other courts of concurrent jurisdiction" did not refer to a justice of the peace, but rather to the common pleas court, police court or mayor's court. In my opinion the latter was the real meaning intended.

Eliminating as the statute does, the Court of Common Pleas, a police court and the mayor's court, it would appear that the only other possible court to which reference might be intended would be a municipal court to which has been given county-wide jurisdiction.

Another consideration that seems to me to have a bearing is the fact that a justice of the peace may not always be found at his office. He may be temporarily absent from the county. In such case a trip across the county with a prisoner might be futile. It would appear that the policy of the law would be to encourage the most direct and speedy proceeding and to permit the accused to be brought before the most convenient magistrate.

Accordingly, it is my opinion that under the provisions of Section 13422-2, General Code, any of the persons named therein may file an affidavit or complaint, charging a person with the commission of a felony or misdemeanor and may file the same with a justice of the peace in any township, unless there has been established within the county a court other than the common pleas court, police court or mayor's court, which has jurisdiction of such offense. Opinion No. 1791, Opinions of the Attorney General for 1938, page 131, approved.

Respectfully,

C. WILLIAM O'NEILL
Attorney General