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1. JUSTICES OF PEACE—TERRITORIAL JURISDICTION IN CIVIL CASES EXPANDED TO INCLUDE JUSTICE COURT DISTRICT IN WHICH JUSTICES WERE ELECTED AND IN WHICH THEY RESIDE—NO COMPARABLE CHANGE IN TERRITORIAL JURISDICTION OF JUSTICES IN CRIMINAL CASES—SECTION 2931.02 RC LIMITS TERRITORIAL JURISDICTION—CERTAIN ENUMERATED EXCEPTIONS TO “THE TOWNSHIP IN WHICH HE IS ELECTED AND WHERE HE RESIDES”—SECTION 1909.01 RC, AM SB 319, 101 GA.
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SYLLABUS:

1. On and after January 1, 1956, the effective date of the amendment of Section 1909.01, Revised Code, as effected by the enactment of Amended Senate Bill No. 319, 101st General Assembly, the territorial jurisdiction of justices of the peace in *civil* cases will be expanded to include the justice court district in which the justices concerned “were elected and in which they reside”; but no comparable change in the

territorial jurisdiction of justices in *criminal* cases is effected by such enactment, and the provisions of Section 2931.02, Revised Code, limiting such territorial jurisdiction, with certain enumerated exceptions, to "the township in which he is elected and where he resides," remain undisturbed by this enactment.

2. Except in those cases in which a special statute expressly confers on justices of the peace the jurisdiction to render final judgment in a criminal prosecution the authority of such courts to render such judgment and impose sentence on the accused is limited by the provisions of Section 2937.10 and 2937.11, Revised Code, to those instances involving misdemeanor charges in which (1) the complaint is made by a "party injured" and the defendant pleads guilty, or (2) the defendant pleads not guilty and waives in writing his right to a trial by jury. A police officer, or a representative of a state administrative agency is not a "party injured." In felony cases a justice is authorized only to conduct a preliminary examination as provided in Chapter 2937., Revised Code, and in a proper case to bind the accused over to the grand jury.

3. There is no provision in Chapter 4715., Revised Code, the dental practice act, authorizing a justice of the peace to render final judgment in cases involving an alleged violation of the provisions of such act.

4. Misdemeanor prosecutions involving an alleged violation of the dental practice act may properly be initiated in the court of a justice of the peace in cases where the offense charged was committed within the territorial jurisdiction of such court, and if such court lacks jurisdiction to proceed to judgment in the case it may require a recognizance to assure the appearance of the accused in the common pleas court for trial.

5. The practice of dentistry is not included within the term "medicine or surgery, or any of its branches" as used in division (P) of Section 2931.02, Revised Code, and the court of a justice of the peace does not, by virtue of the provisions therein set out, have county-wide jurisdiction as to offenses charged under the dental practice act, either to try such cases or to conduct a preliminary examination therein under the provisions of Sections 2937.10 and 2937.11, Revised Code. Such courts do, however, have county-wide jurisdiction to conduct a preliminary examination in such cases, and have the authority, limited as indicated in the second numbered paragraph above, to render judgment therein, in those instances where the complaint is filed by the prosecuting attorney, the sheriff, the party injured or by the authorized representative of a state or federal department, only in the event that there is no other court having concurrent jurisdiction of the offense charged, other than the common pleas court, police court, or mayor's court.

Columbus, Ohio, September 27, 1955

Hugh B. Smith, D.D.S., Secretary, Ohio State Dental Board
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"For many years it has been the policy of this office, in prosecuting violators of the dental law in certain areas of the

state, to take the cases before a Justice of the Peace. Will you please inform us whether or not, under the existing law, violators of the dental practice act can now be prosecuted in the court of a Justice of the Peace, and whether said Justice of the Peace has final jurisdiction in such cases.

In Chapter 4715., Revised Code, the practice of dentistry is defined and certain limitations and restrictions are therein set out regarding such practice. The enforcement of these provisions is provided for in Section 4715.05, Revised Code, as follows :

“The secretary of the state dental board shall enforce sections 4715.01 to 4715.35, inclusive, of the Revised Code. The prosecuting attorney of a county, or the solicitor of a municipal corporation, wherein a violation occurs, shall, when so requested by the secretary, take charge of and conduct the prosecution.”

Penalties for violations of certain of the provisions of this act are provided in Section 4715.99, Revised Code. In all instances except one these penalties are such as to classify the offenses involved as misdemeanors; but in division (E) of this section a penalty of imprisonment from one to twenty years is provided for violation of Section 4715.31, Revised Code, relating to the forgery, counterfeiting, or falsification of a diploma, license, certificate, etc.

It is assumed that you understand that felony charges can be prosecuted only in the Common Pleas Court after indictment by a grand jury, and that the only function of a magistrate in such cases is to conduct the preliminary examination for which provision is made in Chapter 2937., Revised Code, and in proper cases to refer the matter to the proper court by requiring the accused to enter a recognizance for his appearance therein, a procedure sometimes described as a “binding over to the grand jury.”

Because you refer to *prosecution* in the court of a justice of the peace, and to the “final jurisdiction” of such a court, it is assumed that your inquiry concerns only misdemeanors and the authority of a justice of the peace to render final judgment in cases where a misdemeanor is charged under Chapter 4715., *supra*.

The jurisdiction of courts generally is limited in two distinct ways, i.e., territorially, and as to the subject of the action sought to be prosecuted therein. A court has no criminal jurisdiction whatever as to offenses not

committed within its territorial jurisdiction. However, even when it is determined that a court has territorial jurisdiction of an offense, it is still necessary to determine its jurisdiction of the subject of the action, and in criminal proceedings in the court of a justice of the peace it is necessary to determine, in this connection, the extent of the court's authority to proceed to final judgment. These two aspects of jurisdiction will be examined, therefore, in that order.

The territorial jurisdiction of justices of the peace in criminal cases is stated in Section 2931.02, Revised Code, which provides in part:

"A justice of the peace is a conservator of the peace and has 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 court of common pleas, police court, or mayor's court, and 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 him 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. He may also hear complaints of the peace and issue search warrants. Justices of the peace 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 outside this state and it is necessary or desirable to extradite such person. Justices of the peace have jurisdiction within their respective counties in all cases of violation of any law relating to: * * *"

Here follow eighteen divisions, (A) to (R) inclusive, listing various offenses with respect to which justices of the peace have county-wide jurisdiction. Among these is division (P) as follows:

"Laws relating to the practice of medicine or surgery, or any of its branches."

Although the fields of dentistry and medicine are quite closely related, both dealing with the diagnosis and treatment of disease and injuries of the human body, I do not regard dentistry as included within the term "medicine or surgery, or any of its branches," as used in this statute.

In the first place, the definition of "dentistry" is found in a chapter separate from that in which the practice of medicine is defined. In the latter case, moreover, Chapter 4731., Revised Code, defines not only the practice of medicine, Section 4731.34, but also lists the several "limited branches of medicine or surgery," Section 4731.15. This would indicate that the expression "or any of its branches," as used in division (P) of Section 2931.02, supra, has reference to the "limited branches" listed in Section 4731.15, Revised Code.

A question somewhat similar to that here involved was under consideration in *State v. Drug Co.*, 14 Ohio Law Abs., 225, in which it was said by Mauck, J., pp. 225, 226:

"* * * However, we are not called upon to determine whether optometry was a limited branch of medical or surgical practice, as the law stood in 1919 when the optometry bill was passed, because by that act optometry lost, if it ever had its statutory place among the limited branches of medical or surgical practice. That act created a new board for the control of the practice of optometry separate from and independent of the State Medical Board. It was still unlawful to practice any of the limited healing arts coming within the definition of §1286 GC without license by the State Medical Board, but *it became lawful to practice optometry without such certificate, thereby evidencing the Legislative intent to read optometry out of §1286 GC if it were ever therein.*"

(Emphasis added.)

The same line of reasoning is quite clearly applicable in the instant case, and I conclude that the provision above pointed out in division (P) of Section 2931.02, supra, does not confer *county-wide* jurisdiction on justices of the peace as to violations of any of the provisions of Chapter 4715., Revised Code.

It will be observed that justices of the peace are given county-wide jurisdiction in a limited class of cases in the initial provisions of Section 2931.02, supra, and for the sake of convenience the initial sentence in this section is here repeated:

"A justice of the peace is a conservator of the peace and has 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 court of common pleas, police court, or mayor's court, and 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 him 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. * * ** (Emphasis added.)

In the limited circumstances thus described it would appear that justices of the peace have county-wide jurisdiction as to offenses charged under Chapter 4715., Revised Code, the dental practice act.

In passing it may be noted that under the provisions of Section 1901.04, Revised Code, upon the institution of a municipal court all jurisdiction of justices of the peace in both civil and criminal causes terminates within any township or municipality included wholly within such court's territory, and in any portion of such township or municipality so included. The effect of this loss of jurisdiction, in these special situations, is more fully discussed in my Opinion No. 5663, dated August 24, 1955, to which discussion your attention is respectfully invited.

All that has thus far been said has reference to presently existing statutory provisions, and it is necessary to examine the provisions of Amended Senate Bill No. 319, 101st General Assembly, to ascertain whether any changes will be effected thereby on January 1, 1956, the effective date of all of such act excepting only Section 1907.47, Revised Code, relative to compensation of justices.

It will be noted that present Section 1907.05, Revised Code, provides:

"If a part of a township is attached to another township, justices of the peace residing within the limits of such attached part shall execute the duties of their office in the township to which such part is attached in the same manner as if elected for such township, and such justices may hold court in such township."

This section as amended effective January 1, 1956, provides:

"If a part of a justice court district is attached to another justice court district, justices of the peace residing within the limits of such attached part shall execute the duties of their office in the district to which such part is attached in the same manner

as if elected for such district, and such justices may hold court in such district.”

This amendment *suggests* a legislative intent that following the effective date of the amendment a justice of the peace shall have territorial jurisdiction within the *district* within which he resides; but nowhere in the enactment do I find any clear provision to this effect, nor any language which suggests an intent to repeal the plain provisions of Section 2931.02, *supra*, limiting the territorial jurisdiction of these officers in criminal matters, with certain enumerated exceptions, to “the township in which *he is elected* and where he resides.” (Emphasis added.) In this connection we may note that until January 1, 1958, all elected justices of the peace will be serving under commissions issued as a result of election under presently existing law. See Section 1907.03, Revised Code, prohibiting any justice from being deprived of his commission as a result of action by the commission on justice courts.

In presently existing Section 1909.01, Revised Code, we find the following provision:

“Unless otherwise directed by law, the jurisdiction of justices of the peace in civil cases is limited to the township in which such justices were elected and in which they reside. No justice shall hold court outside the limits of the township for which he was elected.”

This section as amended effective January 1, 1956, by Amended Senate Bill No. 319, *supra*, reads:

“Unless otherwise directed by law, the jurisdiction of justices of the peace in civil cases is limited to the justice court district in which such justices were elected and in which they reside. No justice shall hold court outside the limits of the district for which he was elected.”

This provision for an expanded territorial jurisdiction in civil cases, and the failure to include a similar provision as to criminal proceedings, is suggestive of an intent not to disturb the provisions of Section 2931.02, Revised Code, on this subject. Moreover, because it is necessary where the prosecution of criminal proceedings are involved, to accord the applicable statutes a strict construction in favor of the accused, I am impelled to conclude that the enactment here in question leaves unchanged the territorial jurisdiction in criminal proceedings of justices of the peace elected under the provisions of existing statutes.

Your inquiry, however, is primarily concerned not with county-wide jurisdiction of justices, but with their *final* jurisdiction, i.e., with their authority to entertain a criminal prosecution and to pronounce final judgment therein in cases where the offense occurs within the limits of their territorial jurisdiction. This is a matter on which there appears to be a serious and wide-spread misapprehension on the part of the general public, for the authority of these inferior courts to render final judgments in criminal prosecutions is sharply limited by the law.

One instance in which a justice may render final judgment in a criminal case is that involving a violation of the conservation laws, Section 1531.18, Revised Code, providing as follows:

“Any justice of the peace, mayor, or police judge has *final jurisdiction* within his county in a prosecution for violation of any section of the Revised Code or orders of the Wildlife council relating to the taking, possession, protection, preservation, or propagation of wild animals, and has like jurisdiction in a proceeding for forfeiture of property used in violation of any such law or order. Any violation of any order of the council is unlawful.”
(Emphasis added.)

Except in those cases, however, where a special statute of this sort confers “final jurisdiction” on a justice, his authority to render final judgment is limited by the provisions of Section 2937.10 and 2937.11, Revised Code. It does not appear that there is any special provision conferring on justices such “final jurisdiction” as to offenses under the dental practice act, and as to such prosecutions the provisions of these sections would therefore be applied. These sections are as follows:

Section 2937.10. Revised Code:

“When a person charged with a misdemeanor is brought before a magistrate on complaint of the party injured, and pleads guilty thereto, such magistrate shall sentence him and order the payment of costs. If the complaint is not made by the party injured and the accused pleads guilty, the magistrate shall require the accused to enter into a recognizance to appear before the proper court.”

Section 2937.11. Revised Code:

“When an accused is brought before a magistrate and there is no plea of guilty, he shall inquire into the complaint in the presence of the accused. If it appears that an offense has been committed, and there is probable cause to believe the accused

guilty, the magistrate shall order him to enter into a recognizance with good and sufficient surety, in such amount as is found to be reasonable, for his appearance at a proper time and before the proper court, otherwise the accused shall be discharged from custody. If the offense charged is a misdemeanor and the accused, in a writing subscribed by him and filed before or during the examination, waives a jury and submits to be tried by the magistrate, he may render final judgment."

In the first of these sections it will be observed that a judgment of conviction and imposition of sentence may be had only in those cases where (1) there is a plea of guilty *and* (2) the charge is brought on the complaint of the party injured. The Supreme Court in construing this language in *Hanaghan v. State*, 51 Ohio St., 24, held:

"1. An examining magistrate is not authorized to pass sentence upon the accused on his plea of guilty of a misdemeanor, except when the complaint is made by the party injured.

"2. By 'the party injured,' as that phrase is used in section 7146, of the Revised Statutes, is meant the person who suffers some particular injury from the commission of the misdemeanor, as distinguished from that which results to the public, or local community where it was committed."

This decision was followed by the court in the case of *In re Lockhart*, 157 Ohio St., 192, in which it was held:

"1. Where a person charged with a misdemeanor is brought before a justice of the peace on a complaint not made by the party injured and pleads guilty, the justice, under Section 13433-9, General Code, shall require the accused to enter into a recognizance to appear before the proper court, and the justice is wholly lacking in authority to render a judgment fining the accused and causing him to be imprisoned."

The arrest in the *Lockhart* case was made upon the sworn complaint of a deputy sheriff, and Judge Zimmerman said in the opinion on the point here in question:

"It would seem clear from a recitation of the facts that the complaint against *Lockhart* was not filed 'by the party injured.' See *Hanaghan v. State*, 51 Ohio St., 24, 36 N.E., 1072."

It would thus appear that a conviction could not be had in the court of a justice of the peace on a charge of violating the dental practice act, where a plea of guilty is entered, in those cases where the sworn complaint

is made by the secretary, or other enforcement agent, of the state dental board.

In Section 2937.11, Revised Code, you will observe the provision that where there is no plea of guilty a final judgment may be rendered only if the accused waives his right to a jury trial and such waiver is in writing. This limitation, as well as those noted above in Section 2937.10, Revised Code, would be applicable in all cases where it is sought to prosecute offenses under the dental practice act in these courts. It would be entirely proper, of course, to *initiate* such prosecutions in these courts but it would seem unlikely that any great number of cases could be prosecuted therein to final judgment.

In view of the fact that those provisions in Amended Senate Bill No. 319, 101st General Assembly, relating to the retention by justices of the peace of the fees paid by defendants in criminal cases, do not become effective until January 1, 1956, no discussion of the present jurisdiction of justice courts would be complete without mention of the effect of the decision in *Tumey v. Ohio*, 273 U.S., 510; 73 L. Ed., 749, 1927. The headnotes in that decision read in part as follows:

"1. Officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided.

"2. An accused is unconstitutionally deprived of due process of law if his liberty and property are subjected to the judgment of a court the judge of which has a direct and substantial pecuniary interest in reaching a conclusion against him.

"3. One accused of violating the liquor law is unconstitutionally deprived of due process of law by being subjected to trial before a mayor the sole source of whose costs will be the fine imposed upon accused, unless the costs are so small that they may properly be ignored as within the maxim 'de minimis non curat lex.'

"4. The possibility of a mayor receiving \$12 as costs for conviction of one accused of violating the liquor law, and whose emoluments from such source amount to about \$100 per month, in addition to his salary, is not an interest so minute, remote, trifling, or insignificant that his sitting as judge in the case will not deprive accused of due process of law. * * *"

"11. An accused has a right to an impartial judge regardless of the evidence against him, and may halt the trial by objections seasonably raised because of the disqualification of the judge."

Although it is provided in Section 2937.20, Revised Code, that an affidavit of prejudice in a magistrate's court must be filed not less than twenty-four hours prior to the time set for the hearing of the cause, it appears to have been decided in the Tumey case that such an objection may be effectively raised at any time before trial. The Supreme Court of Ohio has held, however, that if the defendant proceeds to trial without raising such objection it is deemed to have been waived. See *Tari v. State*, 117 Ohio St., 481, 1927. Accordingly, until the effective date of Section 1907.32, Revised Code, as amended in Amended Senate Bill No. 319, *supra*, it can be seen that defendants in the criminal prosecutions in which you are interested could avoid the jurisdiction of justice courts by raising objections of this nature.

Accordingly, in specific answer to your inquiry it is my opinion that :

1. On and after January 1, 1956, the effective date of the amendment of Section 1909.01, Revised Code, as effected by the enactment of Amended Senate Bill No. 319, 101st General Assembly, the territorial jurisdiction of justices of the peace in *civil* cases will be expanded to include the justice court district in which the justices concerned "were elected and in which they reside"; but no comparable change in the territorial jurisdiction of justices in *criminal* cases is effected by such enactment, and the provisions of Section 2931.02, Revised Code, limiting such territorial jurisdiction, with certain enumerated exceptions, to "the township in which he is elected and where he resides," remain undisturbed by this enactment.

2. Except in those cases in which a special statute expressly confers on justices of the peace the jurisdiction to render final judgment in a criminal prosecution the authority of such courts to render such judgment and impose sentence on the accused is limited by the provisions of Sections 2937.10 and 2937.11, Revised Code, to those instances involving misdemeanor charges in which (1) the complaint is made by a "party injured" and the defendant pleads guilty, or (2) the defendant pleads not guilty and waives in writing his right to a trial by jury. A police officer, or a representative of a state administrative agency is not a "party injured." In felony cases a justice is authorized only to conduct a preliminary examination as provided in Chapter 2937., Revised Code, and in a proper case to bind the accused over to the grand jury.

3. There is no provision in Chapter 4715., Revised Code, the dental

practice act, authorizing a justice of the peace to render final judgment in cases involving an alleged violation of the provisions of such act.

4. Misdemeanor prosecutions involving an alleged violation of the dental practice act may properly be initiated in the court of a justice of the peace in cases where the offense charged was committed within the territorial jurisdiction of such court, and if such court lacks jurisdiction to proceed to judgment in the case it may require a recognizance to assure the appearance of the accused in the common pleas court for trial.

5. The practice of dentistry is not included within the term "medicine or surgery, or any of its branches" as used in division (P) of Section 2931.02, Revised Code, and the court of a justice of the peace does not, by virtue of the provisions therein set out, have county-wide jurisdiction as to offenses charged under the dental practice act, either to try such cases or to conduct a preliminary examination therein under the provisions of Sections 2937.10 and 2937.11, Revised Code. Such courts do, however, have county-wide jurisdiction to conduct a preliminary examination in such cases, and have the authority, limited as indicated in the second numbered paragraph above, to render judgment therein, in those instances where the complaint is filed by the prosecuting attorney, the sheriff, the party injured or by the authorized representative of a state or federal department, only in the event that there is no other court having concurrent jurisdiction of the offense charged, other than the common pleas court, police court, or mayor's court.

Respectfully,

C. WILLIAM O'NEILL

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