

105

## SYLLABUS:

The Common Pleas Court has the authority to assign counsel where the defendant is prosecuted by information.

Columbus, Ohio, March 22, 1963

Hon. John T. Corrigan  
Prosecuting Attorney  
Cuyahoga County

Dear Sir:

You have requested my opinion whether or not the Common Pleas Court has the authority to assign counsel as provided for in Section 2941.50, Revised Code, in the instance where the defendant is prosecuted by Information, as is provided for in Section 2941.021, Revised Code.

Article I, Section 10 of the Constitution of the State of Ohio provides in part:

“\* \* \* no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury; \* \* \* In any trial in any court, the party accused shall be allowed to appear and defend in person and with counsel; \* \* \*”

Section 2941.021, Revised Code, stipulates that after written waiver of prosecution by indictment any non-capital offense may be prosecuted by information. This section has been held to be not in violation of the Ohio Constitution. *Ex parte Stephens*, 171 Ohio St., 323.

Section 2941.02, Revised Code, provides:

“All sections of the Revised Code which apply to prosecutions upon indictments, the process thereon, and the issuing and service thereof, to commitments, bails, motions, pleadings, trials, appeals, and punishments, to the execution of any sentence, and all other proceedings in cases of indictments whether in the court of original or appellate jurisdiction, apply to informations, and all prosecutions and proceedings thereon.”

The Supreme Court of the United States has held that due process of law requires that where the circumstances are appropriate the trial court can appoint counsel even in the absence of a statute. *Powell v. Alabama*, 287 U.S., 45.

Any offense is infamous that is punishable by death or by imprisonment in the penitentiary. *Cleveland v. Betts*, 168 Ohio St., 386.

Accordingly, I am of the opinion and you are advised that the Common Pleas Court has the authority to assign counsel where the defendant is prosecuted by information.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General