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1. JUSTICES OF PEACE—COUNTY WIDE JURISDICTION—CONSERVATION LAWS — AFFIDAVIT OR COMPLAINT MADE BY PROSECUTING ATTORNEY, SHERIFF, PARTY INJURED OR ANY AUTHORIZED REPRESENTATIVE OF STATE OR FEDERAL DEPARTMENT — IN EVENT NO OTHER COURT OF CONCURRENT JURISDICTION OTHER THAN COMMON PLEAS COURT, POLICE COURT OR MAYOR'S COURT—SECTION 13422-2 GC.
2. SECTIONS 469-1 THROUGH 484 GC, CONSERVATION LAWS WITHIN PURVIEW OF SECTION 13422-2 GC.
3. DIVISION OF PARKS — VIOLATION OF LAWFUL RULE OR REGULATION—PUNISHABLE AS MISDEMEANOR—VIOLATION, LAW RELATING TO OFFENSES FROM OR GROWING OUT OF VIOLATION OF CONSERVATION LAWS—SECTIONS 469-1 ET SEQ., 13422-2 GC.

SYLLABUS:

1. The county-wide jurisdiction conferred on justices of the peace by the 18th proviso of the last sentence of Section 13422-2, General Code, in all cases arising from or growing out of the violation of conservation laws, is in addition to and in no way limited by the provisions of the first sentence of Section 13422-2, General Code, conferring county-wide jurisdiction on justices of the peace upon affidavit or complaint made by the prosecuting attorney, the sheriff, the party injured, or any authorized representative of a state or federal department "only in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court or mayor's court." Opinion No. 1791, Opinions of the Attorney General for 1938, page 131, approved and followed.

2. Sections 469-1 to 484, inclusive, General Code, are conservation laws within the purview of Section 13422-2, General Code.

3. The violation of a lawful rule or regulation of the division of parks adopted pursuant to the provisions of Section 469-1, et seq., General Code, being punishable as a misdemeanor as provided in Section 483-3, General Code, is the violation of a law relating to offenses arising from or growing out of the violation of conservation laws within the meaning of Section 13422-2, General Code.

Columbus, Ohio, July 28, 1953

Mr. A. W. Marion, Director, Ohio Department of Natural Resources
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading in part as follows:

“Blue Rock State Park, which is under the administration of the Department of Natural Resources, Division of Parks, is located in Blue Rock Township, Muskingum County, Ohio.

“Query: Does the Justice of the Peace for Falls Township, Muskingum County, Ohio, (there being no Justices of the Peace in Blue Rock Township, Muskingum County, Ohio) have jurisdiction over an offense committed in Blue Rock State Park where the park patrolman files an affidavit charging an individual with (1) violating a rule or regulation of the Department of Natural Resources, Division of Parks, which rule or regulation was promulgated in accordance with the Administrative Procedure Act under authority of Sections 469-1, 475, 479, and 482, General Code (2) violating Sections 479-1, 479-2, or 479-3, General Code?”

Apparently, some doubt has arisen as to the jurisdiction of a justice of the peace in such cases in view of the fact that there is a municipal court at Zanesville; that while the territory and basic jurisdiction of this municipal court is confined to the corporate limits of Zanesville by virtue of Section 1582, General Code, Section 1598 provides that it “shall also have jurisdiction within the limits of the county or counties in which its territory is situated of those crimes and offenses which are now or may hereafter be within the county-wide jurisdiction of justices of the peace”; and that the first sentence of Section 13422-2 provides that a justice of the peace shall “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.”

The above language from Section 13422-2 has been the subject of interpretation in Opinion No. 1652, Opinions of the Attorney General for 1937, page 2684; Opinion No. 1791, Opinions of the Attorney General for 1938, page 131; Opinion No. 2182, Opinions of the Attorney General for 1952, page 779; State, ex rel. Williams v. Gillette, 59 Ohio Law Abs.,

435 (Common Pleas Court of Lawrence County;) State v. Wheelock, 64 Ohio Law Abs., 129 (Municipal Court of Piqua); and State, ex rel. Dinella v. Bailey, Justice of the Peace, 64 Ohio Law Abs., 225 (Court of Appeals, Wood County.)

While the case of State, ex rel. Williams v. Gillette, supra, is not in accord with the other cases and opinions of the Attorney General referred to above as to the meaning of the language of the first sentence of Section 13422-2, none of such cases or opinions holds that such language limits in any way the county-wide jurisdiction of justices of the peace conferred by the last sentence of Section 13422-2. This sentence reads in part:

“* * * 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: * * *

“18. Offenses arising from or growing out of the violation of conservation laws.”

In the 1938 Opinion it was pointed out that the limitations of the first sentence providing county-wide jurisdiction of justices of the peace on affidavit of certain persons “in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court, or mayor’s court” was not applicable to the eighteen enumerated cases contained in the last sentence of Section 13422-2. I quote from pages 135 and 136 of that opinion:

“* * * It should be here noted that the foregoing discussion relative to the county-wide criminal jurisdiction of justices of the peace has application only to the general provisions contained in Section 13422-2, supra, and in no event should be construed as being determinative of any question that might arise as to the county-wide criminal jurisdiction of justices in those eighteen special cases enumerated in the latter part of the section.

“* * * An examination of Section 13422-2, supra, discloses that the Legislature in the enactment of said section specifically limited the county-wide jurisdiction of justices to those cases that arise upon the filing or making of an affidavit or complaint by any of the parties therein designated and only in the event there is no other court vested with concurrent jurisdiction than the common pleas, police or mayor’s court. However, in the latter part of the section, the Legislature by the introduction of the proviso *unqualifiedly conferred* upon justices of the peace county-wide jurisdiction in all cases of violation of law relating to eighteen special cases therein enumerated.

“* * * It is apparent that in applying the foregoing rule of statutory construction to the proviso, as contained in Section 13422-2, supra, the conclusion is inescapable that it was the intent and purpose of the Legislature in its enactment, to except from the general provisions of the section (relating to the conditions and circumstances under which justices of the peace assume county-wide criminal jurisdiction) those eighteen special enumerated cases as herein contained. * * *”

(Emphasis added.)

We find, therefore, that a justice of the peace has been given county-wide jurisdiction, without qualification, “in all cases of violation of any law relating to: Offenses arising from or growing out of the violation of conservation laws.”

Do the cases in question fall within this scope? The question thus presented is twofold: (1) whether the laws in question are *conservation* laws, and (2) whether, in any event, the violation of a *rule* or *regulation* of the Department of Natural Resources, Division of Parks, would constitute the violation of any *law*.

At the present time the sections of the General Code referred to in your letter are contained in the laws relating to the Department of Natural Resources, Division of Parks. This Department, however, is the successor to the Division of Conservation, formerly a part of the Department of Agriculture. Section 13422-2 was amended to its present form in 1937. At that time the parks of Ohio were under the Division of Conservation. I think it clear, therefore, that the statutes in question are “conservation laws” as that term was employed by the General Assembly.

The sole remaining question is whether a violation of a *rule* or *regulation* would constitute the violation of any *law* within the purview of Section 13422-2. It must be remembered, of course, that there are no crimes in Ohio except those provided by statute; that a regulatory board cannot *provide* a criminal penalty for the violation of its rules or regulations; and that the violation of a rule or regulation is a crime only if made so by specific act of the General Assembly. The violation of rules and regulations of the Division of Parks is made a crime by Section 483-3, General Code, which reads:

“Whoever violates any of the provisions of sections 475 to 483-2, both inclusive, of the General Code, or rules and regulations of the division of parks shall be fined not less than ten dollars, nor more than one hundred dollars and stand committed until such fine and costs are paid.”

For the reasons heretofore stated, I am of the opinion that Section 483-3 is a "conservation law." It would appear that any person in violating a lawful rule or regulation of the division of parks would not only be violating the rule or regulation, per se, but also would be in violation of a specific statute in the nature of a conservation law. While the rule or regulation is violated, the statute making it a crime to violate a rule or regulation is likewise violated, and it is only by virtue of the *statute* that a penal offense has been committed.

My conclusion in this respect is supported by the holding of the Court of Appeals of Butler County in the case of *State v. Waller*, 44 Ohio Law Abs., 591. You will note that the thirteenth proviso of Section 13422-2 states that a justice of the peace shall have county-wide jurisdiction "for the violation of any law relating to public health." On the basis of this language, the court held that a justice of the peace was given county-wide jurisdiction in criminal cases involving a *regulation* of a county health board issued under authority of Section 1261-42, General Code, and thus the justice of the peace had authority to take jurisdictional notice of such regulation.

Here, as in the *Waller* case, Section 13422-2 refers to "violation of any *law*." Here, as in the *Waller* case, a statute makes the violation of a rule or regulation a crime. Compare Section 486-3, General Code, with Section 4414., General Code. The Court of Appeals held that a justice of the peace had county-wide jurisdiction of cases of violations of the regulations of the board of health. It would follow that this same county-wide jurisdiction would exist as to violations of regulations of the division of parks.

The above conclusion is predicated upon the fact that the offenses in question did not take place within the "territory" of the municipal court as defined by Section 1583, General Code. Within the limits of the "territory" of a municipal court, a justice of the peace would be precluded from taking jurisdiction by reason of the provisions of Section 1584, General Code.

In specific answer to your question, it is my opinion :

1. The county-wide jurisdiction conferred on justices of the peace by the 18th proviso of the last sentence of Section 13422-2, General Code, in all cases arising from or growing out of the violation of conservation

laws, is in addition to and in no way limited by the provisions of the first sentence of Section 13422-2, General Code, conferring county-wide jurisdiction on justices of the peace upon affidavit or complaint made by the prosecuting attorney, the sheriff, the party injured, or any authorized representative of a state or federal department only "in the event there is no other court of concurrent jurisdiction other than the common pleas court, police court or mayor's court." Opinion No. 1791, Opinions of the Attorney General for 1938, page 131, approved and followed.

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Respectfully,

C. WILLIAM O'NEILL

Attorney General