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MAYOR, CRIMINAL JURISDICTION—DEFINED BY SECTIONS 4527 ET SEQ. AND 4535 ET SEQ. G. C.—SECTIONS 13433-9 AND 13433-10 G. C. INAPPLICABLE SHOULD THEY BE CONSTRUED IN CONFLICT THEREWITH—“MAGISTRATE”—REGISTRAR OF MOTOR VEHICLES MUST REVOKE PERSONS RIGHT TO DRIVE WHERE CONVICTED OF ANY OFFENSES ENUMERATED IN SECTION 6298-1 G. C. BY MAYOR OF CITY OR WHERE CONVICTED BY MAYOR OF VILLAGE, UNDER JURISDICTION CONFERRED BY SECTIONS 4535 ET SEQ. G. C.

SYLLABUS:

1. *Sections 4527, et seq. and 4535, et seq., General Code, define the criminal jurisdiction of mayors and Sections 13433-9 and 13433-10, General Code, are inapplicable in so far as they might be construed in conflict therewith.*

2. *If a person has been convicted of any of the offenses enumerated in Section 6298-1, General Code, by a mayor of a city in accordance with the jurisdiction conferred by Sections 4527, et seq., General Code, or by the mayor of a village in accordance with the jurisdiction conferred by Sections*

4535, *et seq.*, *General Code*, such person's right to drive must be revoked by the Registrar of Motor Vehicles.

Columbus, Ohio, May 2, 1940.

Hon. Cylon W. Wallace, Registrar, Bureau of Motor Vehicles,  
Columbus, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion as follows:

"Directing your attention to Attorney General's opinion No. 4605 handed down September 3rd, 1935, I kindly request your opinion on the following question. Does said opinion apply to Mayor's Courts, which states in its conclusion as follows:

'that the Registrar of Motor Vehicles is required to revoke the right of a person to operate a motor vehicle upon the public roads and highways of this state as provided in Sections 6298-1 *et seq.*, *General Code*, where such person has been found in a justice of peace court to be guilty of (a) "operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;" (b) "failing to stop after an accident when required to do so by law," under the following circumstances:

First, in cases where the accused has entered a plea of "not guilty" and waived his right to a jury trial in writing and submitted to be tried by the justice of the peace.

Second, in cases where the accused has entered a plea of "guilty" and the complaint has been made by the party injured.'

It has been stated, by the Supreme Court of Ohio, in the case of the State of Ohio vs. Allen 117 O. S., 470 at page 480, that 'jurisdiction of the Mayor is defined to be that of a Justice of Peace, and in all essential respects similar provisions are made for conducting judicial proceedings before the Mayor.'

Therefore, it is our request that we be advised as to whether the jurisdictional boundaries of the Mayor in criminal cases under Section 6298-1 of the *General Code*, is the same as the Justice of Peace Court."

The 1935 opinion to which you refer in your communication held in part as follows:

"The Registrar of Motor Vehicles has jurisdiction to cause such revocation when such person has been convicted in a justice of the peace court of the offense of (a) operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, or (b) failing to stop after an accident when required so to do by law, and

such person has entered a plea of not guilty and waived his right to a jury trial in writing and submitted to be tried by the justice of the peace, or where the accused has entered a plea of guilty and the complaint has been made by the party injured."

The sole question considered in said opinion concerned the jurisdiction of the Registrar of Motor Vehicles with respect to convictions before a justice of the peace. The conclusion reached therein was based upon the provisions of Sections 13433-9 and 13433-10, General Code, which sections read as follows:

Section 13433-9, General 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 to such punishment as he may deem proper according to law, 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 as provided when there is no plea of guilty."

Section 13433-10, General Code:

"When the accused is brought before the magistrate and there is no plea of guilty, he shall inquire into the complaint in the presence of such accused. If it appear that an offense has been committed, and there is probable cause to believe the accused guilty, he shall order him to enter into a recognizance with good and sufficient surety, in such amount as he deems reasonable, for his appearance at a proper time and before the proper court, otherwise, he shall discharge him 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, waive a jury and submit to be tried by the magistrate, he may render final judgment."

The sole question herein presented is whether the provisions of the above sections with respect to the final jurisdiction of a "magistrate" are controlling when the person charged is brought before a mayor.

The criminal jurisdiction of mayors of cities is defined in Sections 4527, 4528, 4530, 4531 and 4532, General Code, which sections provide:

Section 4527, General Code:

"In cities, not having a police court, the mayor shall have final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation, unless imprisonment is prescribed as part of the punishment, and in keeping his dockets and

files, he shall be governed by the laws pertaining to justices of the peace."

Section 4528, General Code:

"He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is, by the constitution, entitled to a trial by jury, and his jurisdiction in such cases shall be co-extensive with the county, and in keeping his dockets and files making report to the county auditor, disposing of unclaimed monies, and in purchasing his criminal docket and blanks for state cases, shall be governed by the laws, pertaining to justices of the peace."

Section 4530, General Code:

"He shall have such jurisdiction in the cases mentioned in the last two sections, notwithstanding the right to a jury, if before the commencement of the trial, the accused waives a jury trial."

Section 4531, General Code:

"If the charge is the violation of an ordinance in a matter with respect to which imprisonment may be a part of the punishment, and the accused does not waive a jury, the mayor shall, nevertheless, impanel a jury, and try the case on the affidavit, in the same manner, and with like effect, as misdemeanors are tried in the court of common pleas on indictment."

Section 4532, General Code:

"If the charge is the commission of a misdemeanor, prosecuted in the name of the state, and the accused, being entitled to a jury, does not waive the right, the mayor may, nevertheless, impanel a jury, and try the case on the affidavit, in the same manner, and with like effect, as such cases are tried in the court of common pleas on the indictment."

By virtue of the above, the mayor of a city not having a police court has final jurisdiction to hear and determine any prosecution for the violation of an ordinance, unless imprisonment is prescribed as a part of the punishment and he has final jurisdiction in any prosecution for a misdemeanor unless the accused is, by the constitution, entitled to a trial by jury. The latter jurisdiction is co-extensive with the county. However, if, before the commencement of trial, the accused waives a jury trial, such mayor has jurisdiction.

If, in an ordinance case, the accused is entitled to a trial by jury and does not waive the same, the mayor shall impanel a jury and try the case.

If the charge is a misdemeanor prosecuted in the name of the state and the accused is entitled to a trial by jury by the constitution, and does not waive the right, the mayor may impanel a jury and try the case. It will be seen that in neither case is it necessary for the accused to demand a jury trial.

The criminal jurisdiction of mayors of villages is defined in Sections 4535, 4536, 4537, 4538 and 4540, General Code, which sections provide:

Section 4535, General Code:

“In villages, the mayor shall have final jurisdiction to hear and determine any prosecution for the violation of an ordinance of the corporation unless imprisonment is prescribed as part of the punishment, and in keeping his dockets and files, he shall be governed by the laws pertaining to justices of the peace.”

Section 4536, General Code:

“He shall have final jurisdiction to hear and determine any prosecution for a misdemeanor unless the accused is, by the constitution, entitled to a trial by jury. His jurisdiction in such cases shall be co-extensive with the county, and in keeping his dockets and files, making report to the county auditor, disposing of unclaimed monies, and in purchasing his criminal docket and blanks for state cases, shall be governed by the laws pertaining to justices of the peace.”

Section 4537, General Code:

“He shall have the jurisdiction in the cases mentioned in the last two sections, notwithstanding the right to a jury, if before the commencement of the trial, a waiver in writing, subscribed by the accused, is filed in the case.”

Section 4538, General Code:

“He may summon a jury, and try the accused, in any prosecution for the violation of an ordinance, where imprisonment is a part of the prescribed punishment, and the accused does not waive a jury, and in such case, judgment shall be rendered in accordance with the verdict, unless a new trial, for sufficient cause, is granted.”

Section 4540, General Code:

“In misdemeanors prosecuted in the name of the state he may summon a jury and try the case notwithstanding the accused has a right to a jury which he has not waived, if a request for such trial subscribed by the accused is filed in the case, before the commencement of the trial. In such case the trial shall be had on the affidavit in the same manner and with like effect as a trial is had on indictment for such offense in the court of common pleas.”

As in the case of mayors of cities, the mayor of a village has final jurisdiction to hear and determine any prosecution for the violation of an ordinance, unless imprisonment is prescribed as part of the punishment and, co-extensive with the county, he has final jurisdiction in any prosecution for a misdemeanor unless the accused is, by the constitution, entitled to a trial by jury.

If, before the commencement of trial, the accused waives his right to a jury, the mayor of a village may exercise jurisdiction. If the violation of an ordinance is involved wherein imprisonment is a part of the prescribed punishment and the accused does not waive his right to a jury, the mayor may, nevertheless, summon a jury and try the case. However, if the charge is a misdemeanor prosecuted in the name of the state and the accused has a right to a trial by jury which he has not waived, the mayor of a village may summon a jury and try the case, if a written request for a trial by jury is filed.

With regard to the question of whether Sections 13433-9 and 13433-10, General Code, apply to the criminal jurisdiction of mayors, the case of *State vs. Borham*, 72 O. S. 358 should be considered. In that case, the court ruled, as disclosed by the syllabus:

“By force of section 1817, Revised Statutes, a mayor of a city in which there is no police court, has final jurisdiction to hear and determine any prosecution for a misdemeanor where the accused is not entitled to a trial by jury, and it is not the mayor’s duty, in such case, to require the accused to enter into recognizance to appear in a higher court, although the complaint is not by the party injured.”

On page 361, the court said:

“ \* \* \* The section specially referred to is 7146, and it is insisted that if section 1817 is construed as giving mayors jurisdiction in prosecutions for misdemeanors to render final judgment where there is a plea of guilty and the complaint is not by the party injured, it renders nugatory as to one class of magistrates the provisions of section 7146 as amended many years after the passage of section 1817. \* \* \* Section 7146 does provide that where one accused of a misdemeanor is brought before a magistrate on the complaint of one other than the person injured, and pleads guilty, the magistrate shall require him to enter into a recognizance to appear at the proper court. It is also true that, in the broad sense, a mayor is a magistrate, so that there is conflict in the text of the two sections.”

On page 363, the court said :

“We are constrained to the conclusion that section 1817 was intended by the general assembly as an exception to the general provisions of 7146. Had the intent been otherwise, it would have been entirely easy, by the use of a half dozen words, to make that purpose plain. No such words are used. This conclusion is strengthened rather than weakened by the fact that, after the enactment of section 1817, the general subject was further considered as is shown by the amendment to section 7146, to which counsel for defendant call attention; and the fact that no change was then made in section 1817 indicates that none was desired. It is the duty of the courts to enforce plain statutes as they find them. *Slingluff v. Weaver*, 66 Ohio St., 621. By these plain terms final jurisdiction is given the mayor, provided only that the offense charged is a misdemeanor and that the accused is not entitled to a trial by jury.”

Section 1817, Revised Statutes, above referred to, was the same in principle as Section 4528, *supra*, and Section 7146, Revised Statutes, was largely the same as Section 13433-9, General Code.

Although the court in the Borham case, *supra*, was concerned with the criminal jurisdiction of the mayor of the city, the reasoning of the opinion and the ruling of the court would likewise apply to the mayor of a village for the criminal jurisdiction of both classes is largely the same.

Consequently, it would appear that Sections 4527, *et seq.* and 4535, *et seq.*, General Code, constitute exceptions to Sections 13433-9 and 13433-10, General Code, as announced in the case of *State vs. Borham*, *supra*, and that the conclusion reached in the 1935 opinion, above referred to, would have no application to prosecutions in a mayor's court.

However, some consideration must be given to Section 13422-1, General Code, which provides in part :

“For the purposes of this title, the word ‘magistrate’ shall be held to include justices of the peace, police judges or justices, mayors of municipal corporations and judges of other courts inferior to the court of common pleas.”

This section was enacted by the Legislature in 1929 and is a part of the same title as Sections 13433-9 and 13433-10, General Code.

In 37 O. J., Section 341, it is said :

“It may be presumed to have been the intention of the legislature that all its enactments, which are not repealed, should be

given effect. Accordingly, all statutory provisions should be construed, if possible, as to give full force and effect to each and all of them, and not to abrogate, defeat or nullify one by the interpretation of another, where that can be done by a reasonable construction of both."

The Legislature, at the time of the enactment of Section 13422-1, General Code, did not repeal any of the sections relating to the criminal jurisdiction of mayors of cities and villages. If it were concluded that Sections 13433-9 and 13433-10, General Code, defined the criminal jurisdiction of mayors, the sections above cited as dealing with mayors would, for the most part, be of no effect.

In 37 O. J. at page 622, it is said:

" \* \* \* the rule is that all laws newly enacted by the general assembly must be presumed to harmonize with existing statutes on kindred subjects neither expressly nor impliedly repealed."

It must also be remembered that Section 13422-1, supra, so far as a mayor is concerned, is merely a specific statement of a fact that has always been recognized. In the State vs. Borham case, supra, which was decided prior to the enactment of Section 13422-1, General Code, the court said that:

"It is also true that, in a broad sense, a mayor is a magistrate."

Sections 13433-9 and 13433-10, General Code, concern all magistrates generally. However, Sections 4527, et seq. and 4535, et seq., apply only to one class of magistrates, viz., mayors. In the case of State, ex rel. vs. Connor, 123 O. S. 310, the court ruled as disclosed by the syllabus:

"Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions."

In view of the above, I am constrained to the view that Sections 4527, et seq. and 4535, et seq., General Code, define the criminal jurisdiction of mayors and that Sections 13433-9 and 13433-10, General Code, are inapplicable in so far as they might be construed in conflict therewith.

In your communication, you have made reference to the case of State vs. Allen, 117 O. S. 470, wherein the court said at page 480, that "jurisdiction of the mayor is defined to be that of a justice of the peace, and in all



essential respects similar provisions are made for conducting judicial proceedings before the mayor". An examination of that case reveals that the reasoning and conclusions of the court have no application to the instant situation for the reason that the court was concerned only with the question of whether a justice of the peace court or a mayor's court was a court of record.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that: (1) Sections 4527, et seq. and 4535, et seq., General Code, define the criminal jurisdiction of mayors and Sections 13433-9 and 13433-10, General Code, are inapplicable in so far as they might be construed in conflict therewith; (2) If a person has been convicted of any of the offenses enumerated in Section 6298-1, General Code, by a mayor of a city in accordance with the jurisdiction conferred by Sections 4527, et seq., General Code, or by the mayor of a village in accordance with the jurisdiction conferred by Sections 4535, et seq., General Code, such person's right to drive must be revoked by the Registrar of Motor Vehicles.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.