"An owner of land, adjacent to a line or partition fence, shall keep all brush, briers, thistles, or other noxious weeds out in the fence corners and a strip four feet wide on his side along the line of a partition fence, but this section shall not affect the planting of vines or trees for use."

Section 5943, General Code, provides that if the owner of land refuses to comply with the provisions of Section 5942, the township trustees upon giving notice shall view the premises and if satisfied that there is cause for complaint may let the work to the lowest bidder or by entering into a private contract.

Section 5944, General Code, provides that the cost of the work ordered by the township trustees is to be placed upon the tax duplicate by the auditor and collected as other taxes.

Brush is defined in Webster's New International Dictionary as "A thicket of shrubs or small trees"; brier is defined as "A group or mass of brier brushes"; and thicket is defined as "A dense growth of shrubbery".

You will note that the definition of the word "brush" includes small trees. It appears from the reading of the last sentence of Section 5942, that is: "but this section shall not affect the planting of vines or trees for use," that the Legislature contemplated that the provisions of this section should apply to small trees such as are included within the meaning of the word "brush".

I do not believe, however, that trees such as you have described in your letter, being three or four inches in diameter, can be construed as brush and therefore are not included within the meaning of the terms of Section 5942.

In specific answer to your inquiry, I am of the opinion that under the provisions of Section 5942, General Code, the owner of land adjacent to a line or partition fence is required to cut only such small trees as come within the meaning of the term "brush" as used in this section.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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1550.

CREATION OF NEW TOWNSHIP—WITHIN LIMITS OF VILLAGE SITUATED IN A TOWNSHIP—JUSTICE OF PEACE OF ORIGINAL TOWNSHIP MAY HOLD CIVIL, BUT NOT CRIMINAL, COURT IN NEW TOWNSHIP.

*SYLLABUS:*

1. *When a justice of the peace is elected in a township and subsequently a new township is created within the limits of a village situated in such township, said justice of the peace may not hold civil court in the new township but must confine his jurisdiction to the township for which he was elected.*

2. *When a justice of the peace is elected in a township and subsequently a new township is created within the limits of a village situated in such township, said justice of the peace may hold criminal court in the new township as well as in the township for which he was elected.*

COLUMBUS, OHIO, February 24, 1930.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your recent communication, as follows:

"We are enclosing herewith letter received from Justice of the Peace Edward W. McGraw of Fairview Township, Cuyahoga County, relative to the jurisdiction of the justice of the peace originally elected for Goldwood Township, after the separation as set forth in his letter.

You are respectfully requested to furnish this department with your opinion as to the jurisdiction of such justice."

The letter enclosed with your communication reads as follows:

"In 1925 a justice of the peace was duly elected for Goldwood Township, of which Fairview Village and Parkview Village were a part.

Sometime after this election, the portion of Goldwood Township within the limits of Fairview Village became a separate township under the name of Fairview Township, but the balance in Parkview Village still exists as Goldwood Township.

Now, after the detachment of the portion of Goldwood Township (known as Fairview Township), was the Justice of the Peace, originally elected for Goldwood Township, still authorized to hold court in Fairview Township, or was he obliged to confine the holding of his court to the limits of Goldwood Township after the separation as above set forth?"

By force of the amendments to the Ohio Constitution effective January 1, 1913, the office of justice of the peace then ceased to be a constitutional office. Acting under the authority conferred upon it by Section 1, Article IV of the Constitution, as amended in 1912, to establish courts inferior to the Court of Appeals, the General Assembly on April 18, 1913, enacted Section 1711-1, General Code (103 O. L. 214) which is as follows:

"That there be and is hereby established in each of the several townships in the several counties of the State of Ohio, 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, the office of justice of the peace.

The jurisdiction, powers and duties of said office, and the number of justices of the peace in each such township shall be the same as was provided by the laws in force on September 3, 1912. All laws and parts of laws in force on said date, in any manner regulating such powers and duties, fixing such jurisdiction or pertaining to such offense or the incumbents thereof are hereby declared to be and remain in force until specifically amended or repealed, the same as if herein fully re-enacted.

This act shall take effect at the earliest period provided by law."

From the provisions of the above section, it is quite evident that the jurisdiction of justices of the peace is not affected by the change from a constitutional to a statutory office, and such justices are still governed by those laws in force on September 3, 1912, which have not since been repealed.

Section 10223, General Code, providing for the jurisdiction in general, of justices of the peace, reads as follows:

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

In the case of the *K. B. Company* vs. *Charles Brenner, et al.*, 11 N. P. (N. S.) 657, it was held that the provision of Section 582 Revised Statutes (now General Code Section 10223, supra) providing that no justice of the peace shall hold court outside the township for which he was elected, is in civil actions mandatory. To the same effect, see the case of *Bucilli* vs. *Hoffman*, 8 O. A., 85, at page 87.

The facts in the matter which you present show that a new township was created out of part of an existing township. Although you do not so state, I assume that the justice of the peace elected in Goldwood Township did not reside in Fairview Village either before or after the creation of the new township. Section 1712, General Code, is applicable to your facts, and provides as follows:

> "When a new township is created, the Court of Common Pleas of the county shall determine on the number of justices of the peace therefor and the day of their election. The clerk of the court shall transmit a copy of such proceedings to the trustees of the township, who shall immediately give notice to the electors to elect such justices in the manner hereinafter provided. If there are no trustees of the township, the clerk shall give notice of such election not less than ten days nor more than fifteen days prior thereto by causing advertisements of the time and place of the holding thereof to be posted in three public places in such township."

From the above section, it would seem that even if the justice of the peace of Goldwood Township resided in Fairview Village at the time of, and after the creation of the township, he would have no authority to act as justice of the peace of the new township (Fairview); however he would continue to have jurisdiction in Goldwood Township by establishing his residence therein within a reasonable time. The Common Pleas Court of Cuyahoga County, on the creation of the new township undoubtedly determined the number of justices of the peace for said township, and thereupon such justices were elected for the new township in the manner provided in the above section. This construction is borne out by a former holding of this office in an analogous situation, to the one which you now present. Said holding is to be found in an opinion addressed to your Bureau under date of April 23, 1928, and reported in the Opinions of the Attorney General for 1928, Vol. II, page 984. The syllabus of that opinion held as follows:

> "Where the county commissioners of a county, acting under the provisions of Section 3249, General Code, create a new township out of that part of the territory of an existing township included within the limits of a municipal corporation therein, duly elected and qualified justices of the peace of such existing township, residing in such municipal corporation do not become justices of the peace of the new township. They continue to be justices of the peace of the prior existing township in and for which they were elected, and they may perform the duties and exercise the jurisdiction of their respective offices therein, provided they establish their residences within such township within a reasonable time after the creation of the new township. If they do not establish their residences in said prior existing township within a reasonable time, vacancies will be created in said offices which the trustees of such township will be authorized to fill."

The direct question presented here is, must the justice of the peace elected for Goldwood Township confine the holding of his court to that portion of the township remaining after the new township (Fairview) was formed? The discussion hitherto clearly shows that with respect to civil cases the answer is in the affirmative; however, such is not the case in regard to criminal cases.

Section 13422-2, General Code, which is Section 2 of Chapter 1, of the new criminal code, effective July 21, 1929, provides 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."

It appears from the above section, which reads exactly the same as former Section 13422, General Code, that a justice has jurisdiction in criminal cases throughout the county in which he is elected, and resides.

In the case of *Steele* vs. *Karb, Sheriff*, 78 O. S., 376, it was held as disclosed by the syllabus, as follows:

> "Under the provisions of Section 610, Revised Statutes, (subsequently G. C. 13422) a justice of the peace has 'jurisdiction in criminal cases throughout the county in which he is elected and where he resides,' and his authority to hear and dispose of a criminal case in the manner prescribed by the statute, is not limited to the township for which he is elected and where he resides." (Matter in parenthesis the writer's.)

After quoting Section 610, Revised Statutes, which read substantially the same then as now, Chief Justice Price, who wrote the opinion of the court, at page 380 used the following language:

> "As to the territorial jurisdiction the above is like that conferred by 'An act defining the powers and duties of justices of the peace and constables in criminal cases,' which passed March 27, 1837, and took effect July 4, 1837. See S. & C. Statutes, p. 810. There it is said: 'Every justice of the peace shall have jurisdiction in criminal cases throughout the county in which he was elected, and where he shall reside. And he shall be a conservator of the peace therein * * * .' So it is, that the territorial extent of his jurisdiction has been of long standing in criminal cases, and then as now his warrant may command the ministerial officer to arrest the accused party and bring him before the issuing justice, or some other in the county. Then as now he was a conservator of the peace throughout the county. There is no limitation as to where the examination or trial shall be held. No court house or fixed place of holding court is provided for such officers as a general rule, and if the magistrate has jurisdiction of criminal cases throughout the county, he has jurisdiction of an offense or crime committed in any township in the county 'in which he is elected and where he resides.' And on view or on sworn complaint while in any township, Section 610, supra, makes it the duty of the justice 'to cause every person charged with the commission of a felony or misdemeanor to be arrested and brought before himself or some other justice,' et cetera.
>
> In case such a magistrate, per chance or per purpose, is abroad from his own township, but in the county where 'he is elected and resides,' on view of the commission of a crime, he may cause the arrest of the perpetrator on

such view, or on sworn complaint, and that he be brought before himself or some other justice of the peace. Must the magistrate return to the confines of his own township in order to try the accused party? The crime was committed in the county, but outside of the township where the magistrate resides and where he was elected. Clearly he has jurisdiction over the crime or offense, because it was committed in his county, and it is equally clear that he can cause the arrest while outside of his own township but within the county. Having jurisdiction of the offense throughout the county and the right to cause the arrest in the township where the same was committed, it seems reasonable that the trial, if one is had, or the plea of guilty taken, if such plea is offered, may be had or taken in the same township, and that having taken jurisdiction of both the offense and the offender, the justice may there determine the case. Unless the statute requires it, it would be in the discretion of the justice to try the accused in the township where the offense was committed and the arrest made, or to return to and open court in his own township. The statute does not forbid him holding the trial outside of his own township. Having jurisdiction of crimes throughout the county, he may hear and determine as to them in any township in the county."

See also the case of *Stiess* vs. *The State of Ohio,* 103 O. S. 33, which approves the case of *Steele* vs. *Karb, supra.* At page 44 of that volume, Chief Justice Marshall used the following pertinent language:

"No provision is made by statute that police justices may only hold court within the limits of the township for which they were appointed, but on the contrary it is provided that they may have jurisdiction in misdemeanor prosecutions co-extensive with the county in which the village is located. The Legislature having placed a limitation upon the location where a justice of the peace may hold court in civil cases, it will be presumed that the legislative intent on this subject was exhausted and that it was not intended to place a like limitation in criminal cases. This rule was followed in the case of *Steele* vs. *Karb, Sheriff,* 78 Ohio St., 376."

By way of specific answer to your question, I am of the opinion that:

1. When a justice of the peace is elected in a township and subsequently a new township is created within the limits of a village situated in such township, said justice of the peace may not hold civil court in the new township but must confine his jurisdiction to the township for which he was elected.

2. When a justice of the peace is elected in a township and subsequently a new township is created within the limits of a village situated in such township, said justice of the peace may hold criminal court in the new township as well as in the township for which he was elected.

Respectfully,
GILBERT BETTMAN,
*Attorney General*