

4881.

APPROVAL, BONDS OF NEWTON FALLS EXEMPTED VILLAGE SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO, \$24,000.00 (23/24 UNLIMITED).

COLUMBUS, OHIO, November 9, 1935.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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4882.

JUSTICE OF PEACE—JURISDICTION UNDER SECTIONS 12604-1, 12614-3, 12428-1, AND 614-104, GENERAL CODE.

**SYLLABUS:**

1. *A justice of the peace does not have final jurisdiction in a case where a law enforcing officer files a complaint charging a violation of Section 12604-1, General Code, unless the accused after entering a plea of "not guilty" and before trial waives in writing a jury trial.*

2. *If a person is charged before a justice of the peace by a law enforcing officer with operating a motor vehicle without proper lights in violation of Section 12614-3, General Code, such justice of the peace can act as an examining magistrate only and has no power to hear and determine such complaint. If a person is charged before a justice of the peace by a law enforcing officer with a second or subsequent offense of violating Section 12614-3, General Code, the justice of the peace may hear and determine such complaint if the accused, after pleading "not guilty" and before trial waives in writing a trial by jury and consents to be tried by the justice of the peace.*

3. *If a person is charged before a justice of the peace by a law enforcing officer with violating either Section 12428-1, General Code, (operating a motor vehicle while intoxicated) or Section 614-104, General Code, (operating a motor vehicle for hire without a permit from the Public Utilities Commission) the justice of the peace cannot assume final jurisdiction in such cases unless the accused, after entering a plea of "not guilty" and before trial waives in writing a jury trial.*

4. *Whether a misdemeanor case should be instituted in the Court of Common Pleas by means of a Bill of Information as provided by Section 13437-34, General Code, is discretionary with a prosecuting attorney.*

COLUMBUS, OHIO, November 9, 1935.

HON. JOHN B. MEISTER, *Prosecuting Attorney, Wauseon, Ohio.*

DEAR SIR:—This will acknowledge your letter which reads as follows:

“I wish to submit the following question for your consideration:

Under Sections 13433-9 and 13433-10, Ohio General Code does a Justice of Peace have final jurisdiction of a case where a constable, sheriff, or state highway patrolman arrests a party for violation of the motor vehicle code, such as for driving while intoxicated, passing a school bus, or with improper lights, or for violation of the public utility commission act, as for not having a public utility commission license for operating a private motor vehicle for hire, in both of which type of case the complaining party is a public official rather than an ‘injured party,’ mentioned in said section 13433-9.

Does it make any difference in this type of case if the defendant violator pleads ‘guilty’ or ‘not guilty’ in so far as the jurisdiction of the Justice of Peace is concerned.

Is it necessary or better procedure in this type of case, where a public official is the complaining party, for the prosecuting attorney to file an information on behalf of the public official and try the case in Common Pleas Court.

In answering this question please consider the recent case of *Ex Parte Stahl*, 49 O. App., 105; 8 O. Bar, decided April 15, 1935.”

The jurisdiction of a justice of the peace is defined in Section 13422-2, General Code, which reads:

“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.”

As a general rule the function and duty of a justice of the peace in a criminal proceeding is to act as an examining magistrate to determine whether an offense has been committed and to discharge the accused or require him to appear before a proper court as the case may warrant. Sections 13422-1 and 13433-1 et seq., General Code.

It is also a well established rule of law that a justice of the peace does not have final jurisdiction to hear and determine a criminal complaint instituted before him, unless the justice of the peace is empowered by law to hear and determine such a complaint. In a great many instances the legislature has expressly clothed justices of the peace with final jurisdiction, that is, with the power to hear and determine a criminal complaint and to discharge or impose sentence upon the accused as the case may require. See Sections 1448 and 13422-3, General Code; *Opinions of the Attorney General*, 1931, Vol. I, page 184 at 185, and 645.

Section 13433-9, General Code, reads:

“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, provides:

“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.”

Under Section 13433-9, General Code, a justice of the peace may have final jurisdiction to hear a misdemeanor if the complaint is filed by the party injured and the accused enters a plea of “guilty”. Section 13433-10, General Code, provides that in a misdemeanor case if the accused, before trial, waives

his right to a jury trial in writing, the justice of the peace may try the accused and enter final judgment.

Section 13424-1, General Code, provides that in prosecutions before a magistrate, when imprisonment is part of the punishment, a trial by jury may be had by one accused of a misdemeanor. It is evident that Section 13424-1, General Code, does not confer of and by itself, final jurisdiction upon a justice of the peace.

Section 13443, General Code, reads:

“At any trial, in any court, for the violation of any statute of the state of Ohio, or of any ordinance of any municipality, except in cases where the penalty involved does not exceed a fine of fifty dollars, the accused shall be entitled to be tried by a jury drawn in the manner prescribed by law for the selection of jurors.”

From a reading of the Code of Criminal Procedure it is evident that a justice of the peace does not have final jurisdiction to hear and determine a misdemeanor unless the statute defining the offense confers by express language final jurisdiction upon the justice of the peace, or where the defendant in a misdemeanor case, after entering a plea of “not guilty” and before trial waives in writing, his right to trial by jury, if the penalty for the offense is either imprisonment or a fine exceeding the sum of fifty dollars. If the statute defining the offense does not confer final jurisdiction upon the justice of the peace to hear and determine a misdemeanor or if the penalty for the offense is such that the accused is not entitled to a jury trial, then in that event a justice of the peace cannot act other than as an examining magistrate, and this is true whether the accused enters a plea of “not guilty” or a plea of “guilty”, except in those misdemeanor cases where the complaint is filed by an injured party and the accused enters a plea of “guilty”. In that event the provisions of Section 13433-9, General Code, become operative and a justice of the peace is authorized to assume final jurisdiction and impose sentence upon the accused. Incidentally, no authority need be cited to sustain the provision that a law enforcing officer is not an injured party within the meaning of that term as used in Section 13433-9, General Code. Where final jurisdiction has not been conferred upon a justice of the peace, the justice of the peace can act as an examining magistrate only and can only bind over to a grand jury a person who enters a plea of “not guilty” or a plea of “guilty”. See *Opinions of the Attorney General*, 1934, Vol. II, p. 1310; *Opinions of the Attorney General*, 1935, No. 4605.

The case of *Ex Parte Stahl*, 49 O. App. 105 (reported in the April 22, 1935 issue of the *Ohio Law Reporter*, page 262) does not conflict with the views herein expressed, since the court in that case merely held that final jurisdiction could not be conferred upon a justice of the peace in a misde-

meanor case where the written waiver of a jury trial was made by the accused after he had entered a plea of "guilty" to a charge of violating a section of the motor vehicle act, which charge was filed by a law enforcing officer. The syllabus reads:

"Where a person is accused of violating a penal section of the motor vehicle act (Sections 12603 to 12628-1, General Code, inclusive) and is brought before a justice of the peace upon a complaint which is not made by the party injured, and such accused pleads guilty, said justice is without jurisdiction to render final judgment and sentence the accused, although the accused, after pleading guilty, subscribes a writing waiving a jury and submitting to be tried by the justice. Under such circumstances the justice has jurisdiction only to 'require the accused to enter into a recognizance to appear before the proper court,' as provided in Section 13433-9, General Code."

I am in agreement with the rule of law announced in that case because the provisions of Section 13433-10, General Code, can be invoked only in a misdemeanor case where the accused, before trial, has in writing waived a jury trial, and which waiver was made after a plea of "not guilty" had been entered. In other words, the provisions of Section 13433-10, General Code, cannot be invoked where the defendant has entered a plea of "guilty" to a criminal charge filed by a law enforcing officer before a justice of the peace.

Failure to stop a motor vehicle while a school bus is receiving or discharging children is made a misdemeanor by Section 12604-1, General Code, and the penalty for such a violation is set forth in Section 12604-3, General Code, which reads:

"Whoever, being the driver of a vehicle or school bus, fails to carry out the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days, or both."

Section 12604-3, General Code, does not expressly confer final jurisdiction upon a justice of the peace. However, because of the penalty provided in Section 12604-3, General Code, final jurisdiction could be given a justice of the peace in a case where a law enforcing officer files a complaint against one for violating Section 12604-1, General Code, and the accused after pleading "not guilty" to such charge and before trial waives in writing as provided in Section 13433-10, General Code, his right to be tried by a jury and consents to being tried by the justice of the peace.

Operating a motor vehicle without proper lights is a misdemeanor under the provisions of Section 12614-3, General Code, which reads:

“It shall be the duty of every person who operates, drives or has upon any public street, avenue, highway or bridge a vehicle on wheels, during the time from one hour after sunset to one hour before sunrise, to have attached thereto a light or lights the rays of which shall be visible at least two hundred feet from the front and two hundred feet from the rear. Provided, however, that this section shall not apply to a vehicle designed to be propelled by hand or to a vehicle designed principally for the transportation of hay or straw while loaded with such commodities. A person violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by a fine not to exceed twenty-five dollars.”

The legislature has provided in Section 12615, General Code, more severe penalties for second and subsequent violations of Section 12614-3, General Code. Under no circumstances except in a case where the person injured files a complaint and the accused pleads “guilty” thereto as provided in Section 13433-9, General Code, could a justice of the peace assume final jurisdiction in a case where a person is charged with violating Section 12614-3, General Code. In a case where a second or third offense for violating Section 12614-3, General Code, is charged by a law enforcing officer before a justice of the peace, the justice of the peace can only assume final jurisdiction in the event the accused enters a plea of “not guilty” and before trial waives in writing a jury trial.

Operating a motor vehicle while intoxicated is in violation of Section 12628-1, General Code, which reads:

“Whoever operates a motor vehicle of any kind upon any public highway or street while in a state of intoxication, or under the influence of alcohol, narcotics or opiates, upon conviction thereof shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail for not less than thirty days nor more than six months, or both, and shall be suspended from the right to operate a motor vehicle for not less than six months nor more than one year; and whoever operates a motor vehicle, upon any public highway or street, during the time he or she has been suspended from such operation, under the provision of this section, shall be guilty of a misdemeanor and shall be imprisoned in the county jail for not less than six months nor more than one year.

For a second or subsequent offense of driving while intoxicated,

shall be suspended from the right to operate a motor vehicle for not less than one year nor more than five years. No person shall be charged with a second or subsequent offense unless such fact is set forth in the affidavit charging the offense.”

On a complaint filed by a law enforcing officer charging a first offense, under Section 12628-1, General Code, a justice of the peace would not have final jurisdiction of such offense unless the accused, after pleading “not guilty” and before trial waived in writing his right to be tried by a jury.

Operating a motor vehicle for private hire without a permit from the Public Utilities Commission is an offense under Section 614-104, General Code. The penalty for such a violation is found in Section 614-118, General Code, which reads in part as follows:

“Every private motor carrier and every officer, agent or employee thereof, and every other corporation, company, association, joint stock association, person, firm or co-partnership who violates or fails to comply with or who procures, aids or abets the violation of any provision of sections 614-103 to 614-120, inclusive, of the General Code, \* \* \* shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty-five dollars and not exceeding one thousand dollars. \* \* \*”

A justice of the peace has not been granted final jurisdiction by the legislature to hear and determine cases arising from violations of the provisions of Section 614-104, General Code. However, final jurisdiction may be conferred upon a justice of the peace in such a case where the complaint is filed by a law enforcing officer and the accused, after entering a plea of “not guilty” and before trial waives in writing his right to a jury trial.

Under Section 13437-34, General Code, a prosecuting attorney in a misdemeanor case may institute such action in a Court of Common Pleas by means of a Bill of Information instead of an indictment. Section 13437-34, General Code, reads:

“In prosecutions for misdemeanor in the court of common pleas, indictment by the grand jury shall not be necessary, but such prosecution may be upon information filed and verified by the prosecuting attorney of the county, or by affidavit when such method is by statute especially provided. The provisions of law as to form and sufficiency, amendments, objections and exceptions to indictments and as to the service thereof shall apply to such information.”

Whether misdemeanor cases should be prosecuted in a court inferior to the Court of Common Pleas or in the Court of Common Pleas by means of Bills of Information filed by a prosecuting attorney is a question of policy which must be determined in each instance by the prosecuting attorney, and is a matter upon which I can render no opinion.

Specifically answering your questions, it is my opinion that:

1. A justice of the peace does not have final jurisdiction in a case where a law enforcing officer files a complaint charging a violation of Section 12604-1, General Code, unless the accused after entering a plea of "not guilty" and before trial waives in writing a jury trial.

2. If a person is charged before a justice of the peace by a law enforcing officer with operating a motor vehicle without proper lights in violation of Section 12614-3, General Code, such justice of the peace can act as an examining magistrate and has no power to hear and determine such complaint. If a person is charged before a justice of the peace by a law enforcing officer with a second or subsequent offense of violating Section 12614-3, General Code, the justice of the peace may hear and determine such complaint if the accused, after pleading "not guilty" and before trial waives in writing a trial by jury and consents to be tried by the justice of the peace.

3. If a person is charged before a justice of the peace by a law enforcing officer with violating either Section 12428-1, General Code, (operating a motor vehicle while intoxicated) or Section 614-104, General Code, (operating a motor vehicle for hire without a permit from the Public Utilities Commission) the justice of the peace cannot assume final jurisdiction in such cases unless the accused, after entering a plea of "not guilty" and before trial waives in writing a jury trial.

4. Whether a misdemeanor case should be instituted in the Court of Common Pleas by means of a Bill of Information as provided by Section 13437-34, General Code, is discretionary with a prosecuting attorney.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*