

three hundred and eighty-nine acres which included the three hundred and thirty-five acre tract first above mentioned as one of the tracts of land here under investigation. By the second of said deeds there was conveyed to said W. F. Seymour the fifty acre tract, which is the above described third tract here under investigation, and also a tract of one hundred and seventy acres which included the second tract of one hundred and forty-five acres above referred to.

Presumably these deeds from the Ohio State University were taken by W. F. Seymour on the theory that the original surveys containing these lands and the patents issued thereon were invalid, and that by reason of congressional and state legislation relating to unsurveyed lands in the Virginia Military District the title to the lands in said original surveys became vested in the Ohio Agricultural and Mechanical College, the predecessor in name of the Ohio State University. As to this it is to be observed that the surveys which respectively included the tracts of land here in question were returned and that patents were issued thereon on November 1, 1849, which was more than two years prior to January 1, 1852, by which date, under act of congress, said surveys were required to be returned for patent. See *Coan vs. Flagg*, 38 O. S., 156; *Coan vs. Flagg*, 123 U. S., 117. The only other objection to said original surveys that could be suggested, touching the question of their validity, would be that depending upon the fact whether the acreage included in said surveys were so excessive as compared with the acreage called for in the warrants on which said surveys were made as to render said surveys fraudulent and void against the government of the United States. See *Coan vs. Flagg*, supra.

Upon the information contained in the abstract of title submitted I cannot say as a matter of law that said original surveys were fraudulent and void for the reason above suggested and that, therefore, the deeds executed by the Ohio State University to W. F. Seymour were the original source of title of said W. F. Seymour to the tracts of land here in question.

In this situation the defects in the chain of title to the several tracts of land above noted must be considered to be material defects, and the title of said W. F. Seymour to the property here under investigation is for these reasons disapproved.

I am returning to you with this opinion said abstract of title, warranty deed, encumbrance estimate No. 5840, and other files relating to the proposed purchase of said property.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1782.

JUSTICE OF THE PEACE—RIGHT TO ISSUE SEARCH WARRANTS
THROUGHOUT HIS COUNTY.

SYLLABUS:

A justice of the peace has jurisdiction to issue search warrants under the Crabbe Act co-extensive with the county, and such jurisdiction is not affected by the terms of Section 13422-3 of the new Code of Criminal Procedure.

COLUMBUS, OHIO, April 15, 1930.

HON. RUPERT BEETHAM, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

"I would like your opinion as to whether a Justice of Peace has that authority to issue a search-warrant for intoxicating liquors in a municipal corporation in his township or anywhere else in the county, outside of his own township.

The Criminal Code, as passed by the last Legislature, seems to be a little contradictory in this respect."

I understand that the section of the new Criminal Code which you have in mind, and which gives rise to your inquiry, is Section 13422-3 of the General Code, which provides in part, as follows:

"Magistrates shall have jurisdiction within their respective counties, in all cases of violation of any law relating to:

* * *

8. The selling, giving away or furnishing of intoxicating liquors as a beverage, or keeping a place where such liquor is sold, given away or furnished in violation of any law prohibiting such acts within the limits of a township and without the limits of a municipal corporation;

* * *"

Section 6212-18 of the General Code, in so far as it is pertinent to your inquiry, provides as follows:

"Any justice of the peace, mayor, municipal or police judge, probate or common pleas judge within the county * * * The officers named herein shall have authority to issue search warrants as provided for in Section 6212-16 of the General Code, and the jurisdiction granted herein shall be co-extensive with the county, whether or not within the county there is a municipality having a municipal court."

This section clearly authorizes a justice of the peace to issue search warrants co-extensive with the county, whether or not within the county there is a municipality having a municipal court.

Section 13422-3 of the General Code, gives a justice of the peace final jurisdiction in the special classes of cases mentioned therein. It does not confer any authority upon a justice of the peace to issue search warrants in these cases. A statute giving the court jurisdiction in criminal matters does not grant the power to such court to issue search warrants. This authority must be specifically provided for by statute.

In the case of *Ciano vs. State*, 105 O. S. 229, the Supreme Court of Ohio held that a search warrant issued by a common pleas judge prior to the enactment of Section 6212-18, General Code, as amended in 109 O. L. 144 was invalid and unwarranted, for the reason that there was no statutory authority for the court to issue such warrant. The Common Pleas Court, at the time it issued the search warrant, had jurisdiction of crimes and offenses.

Since the jurisdiction conferred by Section 13422-3, General Code, does not include the authority to issue search warrants, this section cannot have any effect upon the authority granted a justice of the peace to issue search warrants, as provided by the terms of Section 6212-18, of the General Code.

In specific answer to your inquiry, I am of the opinion that the jurisdiction of a justice of the peace to issue search warrants co-extensive with the county, as provided by the terms of Section 6212-18, General Code, is not affected by the terms of Section 13422-3, of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.