

I am therefore of the opinion that the petition should be returned upon demand to those persons who originally filed it with the board.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

511.

JUSTICE OF THE PEACE— IF NO WAIVER OF TRIAL BY JURY IS FILED,  
JUSTICE OF THE PEACE IS EXAMINING MAGISTRATE FOR OFFENSES COMMITTED UNDER SECTION 5652-14, GENERAL CODE.

SYLLABUS:

*When a plea of "not guilty" is entered before a justice of the peace to an affidavit charging a violation of Section 5652-14, General Code, said justice is without jurisdiction to render a final judgment unless as provided in Section 13511, General Code, the defendant in a writing subscribed by him waives the right of trial by jury and submits to be tried by said justice. If no such waiver be filed, the justice shall inquire into the complaint in the presence of the accused and if it appear that there is probable cause to believe the accused guilty, order the accused to enter into a recognizance to appear before a proper court of the county, viz., the probate court or the common pleas court.*

COLUMBUS, OHIO, May 19, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your letter of recent date which reads as follows:

"Will you kindly render this department your opinion upon the following question?

When a person is arrested for the violation of Section 5652-14 of the General Code and brought before a justice of the peace and pleads 'not guilty', does the justice of the peace have jurisdiction to try the case and assess a fine or should he bind the party over to the grand jury in the event that he determines that the evidence is sufficient to so warrant?"

Section 5652-14, General Code, about which you inquire, reads as follows:

"Whoever, being the owner, keeper or harbinger of a dog more than three months of age or being the owner of a dog kennel fails to file the application for registration required by law, or to pay the legal fee therefor, shall be fined not more than twenty-five dollars, and the costs of prosecution. The fine recovered shall be paid by the justice of the peace, mayor or judge of municipal court to the county auditor, who shall immediately pay the same into the county treasury to the credit of the dog and kennel fund."

An examination of the act of March 21, 1917, (107 O. L. 534) which amended Section 5652, General Code, and supplemented the same by additional Sections 5652-1 to 5652-15, both inclusive, and of the act of May 9, 1919, (108 O. L. Part I,

534), which amended said sections to read as they now appear in the General Code, discloses that although certain penal sections were contained in each act, the act of March 21, 1917, did not provide, nor does the present law contain provisions stating what court or courts should have jurisdiction of the subject matter.

The law is well established in this state that a justice of the peace has no power, authority or jurisdiction, except that given by statute, and that before a magistrate can render a valid judgment he must have final jurisdiction of the subject matter of the offense then pending before him. By final jurisdiction in criminal causes is meant the authority to try the defendant on the charge made against him, and to impose a penalty or acquit him, and not the mere authority to inquire into whether or not an offense has been committed and discharge the defendant or bind him over to another court.

Certain provisions of Section 5652-14, General Code, apparently indicate an intention on the part of the legislature to confer final jurisdiction upon justices of the peace to hear and determine complaints filed under such section. The pertinent part of this section provides as follows:

“ \* \* \* The fine recovered shall be paid by the justice of the peace, mayor or judge of municipal court to the county auditor, who shall immediately pay the same into the county treasury to the credit of the dog and kennel fund.”

Bearing in mind, however, the fact that justices of the peace have only such jurisdiction as is specifically conferred upon them by statute and that courts will not, by construction, extend that jurisdiction beyond the plain language of the statute giving such jurisdiction, it is my opinion that the portions of the section above quoted are not sufficient to show an intention on the part of the legislature to confer final jurisdiction on a justice of the peace in this class of cases. The jurisdiction of justices of the peace and of mayors or judges of municipal courts is not the same in this class of cases. See Sections 4528 and 4536 of the General Code, wherein mayors of cities and villages are respectively given “final jurisdiction to hear and determine any prosecution for a misdemeanor, unless the accused is, by the constitution, entitled to trial by jury.” See also the sections of the General Code establishing the various municipal courts and fixing their jurisdiction. Section 5652-14, *supra*, does not serve to confer jurisdiction, but only to provide for the disposition of the fines recovered in those cases in which the courts named have jurisdiction under the law.

Having determined that the act of which Section 5652-14, *supra*, is a part, does not confer final jurisdiction on a justice of the peace in this class of cases, the inquiry arises as to whether any other section of the General Code does confer such jurisdiction.

Section 13422, General Code, defines the general jurisdiction of a justice of the peace in criminal cases and provides:

“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.”

Section 13423, General Code, enumerates sixteen classes of offenses over which a justice of the peace has special or final jurisdiction. A number of other sections of the code specifically provide that such magistrates shall have final jurisdiction over the subject matter therein involved.

The offense defined in Section 5652-14, *supra*, is not included in any of these sections conferring final jurisdiction upon justices of the peace.

In determining the procedure in misdemeanor cases other than those over which a justice of the peace has special or final jurisdiction reference must be had to the provisions of Sections 13510 and 13511, General Code. It is provided in the former section that when a person charged with a misdemeanor *upon complaint of the party injured* enters a plea of guilty thereto a magistrate shall sentence him to such punishment as he may deem proper according to law; but if the complaint is not made by the party injured and the accused pleads guilty, such magistrate shall require the accused to enter into a recognizance to appear in the proper court as is provided when there is no plea of guilty.

What is meant in Section 13510, *supra*, by the term "party injured" is defined by the court in the case of *Hanaghan v. The State*, 51 O. S. 24, wherein the court said:

"If every citizen of the state, or member of the community where the offense is committed, is included in those descriptive words, this proceeding in error is without merit. But it is evident they were not used in the statute in that sense. They refer, we think, to the person who suffers some particular injury from the commission of the offense, either in his person, property or reputation, as distinguished from that which results to the general public or local community."

It is apparent that the offense of failing to register a dog or pay the legal fee therefor is not in the class of misdemeanors in the commission of which there may be an "injured party" in the sense as above defined by the Supreme Court. It follows, therefore, that when a complaint is made under Section 5652-14, *supra*, before a justice of the peace, he has no jurisdiction upon a plea of guilty to impose the penalty of the law, but is required as is provided in Section 13510, General Code, to order the defendant to enter into a recognizance for his appearance at another court, unless said defendant, upon entering his plea of guilty, should in writing waive the right of a trial by jury and submit to be tried by the magistrate, as provided in Section 13511, General Code.

Without quoting in full the provisions of this last named section, it is sufficient to say that in cases of misdemeanor it permits the accused, to waive, in a writing subscribed by him and filed before or during the examination the right of trial by jury and to submit to be tried by the magistrate. When the accused acts in accordance with these provisions of Section 13511, the justice of the peace is invested with jurisdiction to render final judgment.

Like conclusions were reached by this department in an opinion reported in Opinions, Attorney General, 1916, Vol. II, page, 1437, to which your attention is directed.

Summarizing and answering your question specifically, it is my opinion that if a complaint charging a violation of Section 5652-14, *supra*, be filed before a justice of the peace and the accused pleads guilty, the justice of the peace shall require the accused to enter into a recognizance to appear in the proper court of said county, *viz.*, either the common pleas court or the probate court. If the accused pleads not guilty, the justice of the peace shall inquire into the complaint in the presence of the accused and if it appear that an offense has been committed and that there is probable cause

to believe the accused guilty, order the accused to enter into a recognizance to appear before the proper court of the county, viz., the common pleas court or the probate court.

In either of the above cases, if 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, the justice of the peace may render final judgment. While the filing of such a waiver in this class of cases may seem unnecessary because the accused would in no event be entitled to a jury trial inasmuch as the penalty therein provided is only a fine, by the express terms of the statute above cited, unless such waiver be filed, the justice of the peace is without jurisdiction to hear and finally determine the cause.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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512.

APPROVAL, NOTE OF FALLS TOWNSHIP RURAL SCHOOL DISTRICT,  
HOCKING COUNTY, \$6,720.00.

COLUMBUS, OHIO, May 19, 1927.

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

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513.

MUNICIPALITY—ALTERATION OF CERTIFICATE—SECTIONS 13105,  
13088 AND 5660, GENERAL CODE, DISCUSSED—"FALSE" AND  
"FRAUDULENT" DISCUSSED—OBLIGATION ENTERED INTO WITH-  
OUT CERTIFICATE NULL AND VOID—CRIMINAL LIABILITY DIS-  
CUSSED.

**SYLLABUS:**

1. *Under Section 13088, General Code, an offense is committed when one maliciously alters, defaces or mutilates the whole or part of a record authorized to be made by law pertaining to a municipal office or officer, or an other public record authorized by law, or a paper or writing duly filed under authority of law with, in or by a municipal office or officer.*

2. *Whether or not the changing of the date on an invoice for supplies sold to a municipal corporation would constitute a violation of Section 13088, General Code, would depend upon the facts in each particular case, including facts showing whether or not such alteration was done maliciously, whether or not the bill was a paper or writing duly filed under authority of law with, in or by a municipal office or officer, et cetera.*