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JUSTICES OF THE PEACE: Criminal jurisdiction.

A justice of the peace has county-wide jurisdiction in criminal cases, and can for that purpose hold court anywhere in the county in which he is elected. R.J.A. § 6601 does not repeal or otherwise affect such jurisdiction of justices of the peace which is conferred upon them by the code of criminal procedure.

No. 4122

April 24, 1963.

Mr. James G. Fleming
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Your request for an opinion notes the revised judicature act of 1961¹ became effective on January 1, 1963. You cite § 6601,² and submit the following questions:

"1. Does Chapter 66 of the Revised Judicature Act and in particular Section 600.6601 (paragraphs 2 and 3) directly repeal or by implication repeal Michigan Statutes Annotated 28.845 and Michigan Statutes Annotated 28.1192 and thereby limit a Justice of the Peace to jurisdiction in criminal cases arising only in his township?

"2. Does Section 600.6601 (paragraphs 2 and 3) limit a Justice of the Peace in criminal cases to hearing criminal cases only within the confines of his own township, or may he hold court in criminal causes outside of his township?"

The 1908 Michigan Constitution³ provides:

" * * They [justices of the peace] shall also have such criminal jurisdiction and perform such duties as shall be prescribed by law."

This section re-enacted without material change the corresponding provisions of the 1850 Constitution.⁴ Historically, the jurisdiction of the justices of the peace in civil actions has been prescribed by statutory provisions separate and apart from those relating to their jurisdiction in criminal prosecutions. Thus, section 1 of Chapter 93 of the Revised Statutes of 1846 entitled "Of Courts Held by Justices of the Peace," provided:

"Every justice of the peace elected in any township or city of this state, and duly qualified according to law, shall have power to hold a court in his township or city, and shall have original jurisdiction of all civil actions wherein the debt or damages demanded do not exceed the sum of one hundred dollars, except as is provided in the next section, and to hear, try and determine the same according to law."

Chapter 94 of the Revised Statutes of 1846 is entitled "Of Criminal Pro-

¹ Act 236, P.A. 1961, being M.S.A. 1962 Rev. Vol. § 27A.101 et seq. Sections of the Act have been assigned C.L. Nos. § 600.101 et seq.

² M.S.A. 1962 Rev. Vol. § 27A.6601.

³ Article VII, Section 16.

⁴ Article VI, Section 18.

ceedings before Justices of the Peace." Section 1 of Chapter 94 vests jurisdiction in justices of the peace to hear and determine charges for various criminal offenses enumerated in the first seven subsections "arising within their respective counties." Subsection 8 of section 1 of Chapter 94 specified that justices of the peace should have jurisdiction of:

"And all other offences punishable by fine not exceeding one hundred dollars, or punishable by imprisonment in the county jail not exceeding three months, or punishable by both said fine and imprisonment."

The latter section remained in force unchanged until its amendment by Act 189, P.A. 1899. As amended by that act, subsection 8 read:

"And all other offenses punishable by fine not exceeding one hundred dollars, or punishable by imprisonment in the county jail not exceeding three months, or punishable by both said fine and imprisonment: PROVIDED, That whenever, in any criminal case, tried before any justice of the peace, the defendant shall be adjudged guilty and punishment by fine or imprisonment shall be imposed in excess of that allowed by law, the judgment shall not for that reason alone be adjudged altogether void nor be wholly reversed and annulled, but the same shall be valid and effectual to the extent of the lawful penalty, and shall be reversed and annulled only in respect to the unlawful excess."

Said section 1 of Chapter 94 was not thereafter amended prior to its repeal by the code of criminal procedure.⁵ The provisions of said section were codified and re-enacted as section 1 of Chapter 14 of that act.⁶ Prior, however, to the enactment of the code of criminal procedure, a separate act was adopted without expressly repealing Chapter 94 of the Revised Statutes of 1846, which act⁷ was entitled, "An Act to empower justices of the peace to perform official acts and exercise jurisdiction in criminal causes in any part of the county in which elected and qualified." Section 1 of that act provided:

"Any justice of the peace is empowered and authorized to perform all official acts and duties and to exercise jurisdiction in criminal causes in any township or city situate in the county within which the justice of the peace was elected and qualified, with the same rights and powers as though performed and exercised within the city or township in which such justice of the peace was elected and qualified."

That act was likewise repealed by the code of criminal procedure, and section 1 thereof was re-enacted in identical verbiage as section 2 of Chapter II of the code.⁸ Both of those sections of the code remain in full force and effect today without amendment, except as above noted.

⁵ Act No. 175, P.A. 1927, C.L. 1948 § 760.1 et seq., M.S.A. 1954 Rev. Vol. § 28.841 et seq.

⁶ This section was thereafter amended by Act No. 24, P.A. 1929, C.L. 1948 § 774.1 and again amended by Act No. 14, P.A. 1952, C.L.S. 1956 § 774.1, M.S.A. 1954 Rev. Vol. § 28.1192.

⁷ Act No. 124, P.A. 1925.

⁸ C.L. 1948 § 762.2, M.S.A. 1954 Rev. Vol. § 28.845.

Turning now to the jurisdiction of justices of the peace in civil actions, section 1 of Chapter 93 of the Revised Statutes of 1846, above quoted, was amended to effect a minor change in the wording thereof by Act No. 173, P.A. 1855. Thereafter the section remained in effect without further change until its amendment by Act No. 127, P.A. 1897, by which the following proviso was inserted at the end thereof:

“* * * PROVIDED, That no justice of the peace shall hold court or try any cause, civil or criminal, in any other township or city than that in which he was elected and qualified.”

The title of this 1897 amendatory act made no reference to criminal jurisdiction. This section was not again amended prior to its re-enactment as section 1 of Chapter 66 of the judicature act of 1915.⁹ As re-enacted,

“* * * PROVIDED, That no justice of the peace shall hold court or try any cause, civil or criminal, in any other township or city than that in which he was elected and qualified, *except in cases where special provision is otherwise made by law.*” (Emphasis supplied)

It will be noted that the underscored clause was inserted as an exception to such proviso.¹⁰ Thus the legislature recognized that justices of the peace might be authorized by other statutes to exercise criminal jurisdiction in townships and cities other than that in which elected, and specified that in that event any such “special provision” would control. The above quoted provisions of the code of criminal procedure authorizing a justice of the peace to exercise criminal jurisdiction in other townships and cities of the same county constituted such a provision. The re-enactment of the quoted provisions of the judicature act, including the identical exception thereto, as subsection 2 of section 6601 R.J.A., serves to reiterate such legislative intent that the provisions of the criminal code would control.

The Supreme Court ruled upon a similar issue in a case¹¹ involving a provision of the school code authorizing the superintendent of public instruction to review petitions for the consolidation of contiguous rural school districts to form a rural agricultural school district and determine the advisability thereof, and specifying “His action in the matter shall be final.” Plaintiff filed a bill to review the determination of the superintendent relying upon a general provision of the judicature act of 1915 providing for an appeal from orders, decisions or opinions of state boards, commissions or agencies. In holding that the action would not lie, the court stated:

“* * * This very definite provision in the school code may not be inferentially nullified by the above quoted Act No. 314, chap. 6, § 5, Pub. Acts 1915, as added by Act No. 21, Pub. Acts 1947, upon

⁹ Act No. 314, P.A. 1915. Section 1 of Chapter 66 was C.L. 1915 § 14166. such proviso read:

¹⁰ This section was amended by Act 168, P.A. 1923, without change in the proviso. The section was re-enacted without substantive change as section 6601 of the revised judicature act of 1961, M.S.A. 1962 Rev. Vol. § 27A.6601. The quoted provision was continued as subsection 2 of section 6601 without material change, although not in the form of a proviso.

¹¹ *Bridgheampton School District No. 2, Fractional, of Carsonville, Michigan vs. Superintendent of Public Instruction*, 323 Mich. 615, 621.

which plaintiff relies in asserting jurisdiction in the circuit court.
* * *

In my opinion the supreme court would likewise hold that the above quoted provisions of the code of criminal procedure authorizing the justice of the peace to exercise jurisdiction in criminal causes in other townships or cities of the same county were neither repealed by implication nor otherwise nullified by section 6601. The legislative intent as expressed by the exception to the provisions of subsection 2 of that section dictates such holding. It is further supported by reference to the object of the respective acts as expressed in their title.

The provisions of both the judicature act of 1915, and the Revised Judicature Act of 1961, are confined exclusively to the jurisdiction of the courts in civil actions and various other provisions relating thereto.

Issue was presented to a former Attorney General¹² as to whether a justice of the peace was authorized to exercise jurisdiction in criminal cases in townships and cities other than the township in which he was elected. The Attorney General reviewed the constitutional and statutory provisions then in effect, including above cited provisions of the Judicature Act of 1915 and the code of criminal procedure, and concluded that the justice of the peace was authorized by legislative act to hold court in criminal cases in other townships and cities of the same county. By a later opinion¹³ it was held that the provisions of an act amendatory to the judicature act, but purporting to fix witness fees in criminal cases, were ineffective as not being germane to the title of the judicature act. That opinion stated at page 490:

"It will be seen that this title declares the object of the judicature act to be the regulation of practice and procedure in civil matters. The title to the code of criminal procedure, on the other hand, indicates that the object of that act is to regulate criminal procedure, including 'fees of * * * witnesses * * * in criminal cases.'"

In *People vs. Stanley*,¹⁴ appellant contended that he was entitled by virtue of legislative act to appeal from his conviction to the Supreme Court as a matter of right. He relied as authority therefor upon Act No. 53, P.A. 1954, which purported to authorize the same. However, Act No. 53 amended a section of the judicature act rather than section 3 of Chapter 10 of the code of criminal procedure, which specified:¹⁵

"Writs of error in criminal cases shall issue only in the discretion of the supreme court or any justice thereof, on proper application therefor."

In rejecting appellant's contention and holding that the above quoted provisions of the criminal code were not repealed by implication by the adoption of Act No. 53, the court stated at pages 538-540:

¹² O.A.G. 1939-40, p. 432.

¹³ O.A.G. 1949-50 No. 1179, p. 489.

¹⁴ 344 Mich. 530.

¹⁵ C.L. 1948 § 770.3, M.S.A. 1954 Rev. Vol. § 28.1100.

“Subsequent to the enactment of the judicature act, *supra*, a ‘code of criminal procedure’ was enacted by the legislature in 1927 (P.A. 1927, No. 175 [C.L. 1948, § 760.1 *et seq.*, as amended (Stat. Ann. 1954 Rev. § 28.841 *et seq.*, as amended)]). The title of said code of criminal procedure as applicable here, states that it is

“An act to revise, consolidate and codify the laws relating to *criminal procedure* and to define the jurisdiction, powers, and duties of courts and of the judges and other officers thereof under the provisions of this act; * * * to provide for procedure relating to new trials, appeals, *writs of error* and bills of exception *in criminal causes.*’ (Italics supplied)

“* * *

“The title of the judicature act negatives a conclusion that it was intended by the legislature to apply to procedure in criminal cases. The later enactment of the code of criminal procedure, without making reference to the judicature act, shows the legislative intent. These 2 acts were obviously intended by the legislature to apply to the practice and procedure in civil cases separate from that in criminal cases. A mere reading and comparison of the titles of the judicature act and of the code of criminal procedure can lead to only one conclusion — one was intended by the legislature to refer to practice and procedure in civil cases, and the other to criminal procedure.”

Prior to the enactment of the Revised Judicature Act of 1961, justices of the peace were authorized to hold court in criminal cases in townships and cities throughout the county in which they were elected. Such authority was conferred by the above cited provisions of the code of criminal procedure. Adoption of the Revised Judicature Act of 1961 and the re-enactment therein of the provisions of the Judicature Act of 1915 relating to the jurisdiction of justices of the peace in civil actions would not for the reasons above set forth repeal or otherwise affect the jurisdiction of justices of the peace in criminal cases. On the contrary, they are still authorized to hold court in criminal cases throughout the county in which elected.

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