

JUSTICES OF THE PEACE:
CRIMINAL PROCEDURE:
CHANGE OF VENUE:

Trials in justice courts for misdemeanors must be held in the township in which offense was committed. Justice of the peace is not authorized to send the case to another township and if it is done the justice of the latter township has no jurisdiction to try the case and if it is tried and appealed to the circuit court, the circuit court has no jurisdiction of the case.

October 10, 1940

Hon. Melvin Englehart
Prosecuting Attorney
Madison County
Fredericktown, Missouri



Dear Sir:

This is in reply to yours of recent date, wherein you submit the following statement and question:

"In July, 1939 I filed an information charging one Gibbs with a misdemeanor in Castor Township of this county. After the information was filed and the witnesses subpoenaed, the Justice of Peace informed the state and the Defendant that he could not render a fair and impartial decision in said cause because of his bias and prejudice in the matter, whereupon he transcribed all of the pleadings in the case and transferred the cause to one of the Justices of St. Michael Township of the same county.

"The case was set for trial before the Justice of St. Michael Township, Madison County, Missouri and the de-

defendant filed a motion to quash the information on the ground that the Justice in St. Michael Township did not have jurisdiction because the Justice of Castor Township had no authority to transfer the cause to St. Michael Township. The motion to quash was overruled and the Defendant was placed on trial and convicted. He appealed to the Circuit Court of Madison County and in the September term, 1939, of said county, defendant filed a motion to quash the information on the ground that the justice court of St. Michael Township had no jurisdiction and based his motion upon that part of the above described sects, which reads as follows:

"Provided, that all prosecutions before Justice of Peace for misdemeanor shall be commenced and prosecuted in the Township wherein the offense is alleged to be committed."

"The motion was taken under advisement by the court and at the September term, 1940 was sustained. * * * *"

"I would like to secure your opinion on this subject. I have never been able to find a case decided by the courts of our State on this subject directly. * * * *"

Section 37 of Article VI of the Constitution of Missouri, provides as follows:

"In each county there shall be appointed, or elected, as many justices of the peace as the public good may

require, whose powers, duties and duration in office shall be regulated by law."

From this section it will be seen that the powers and duties of the justice of the peace are regulated by statute. In our research of the statutes we fail to find where a justice of the peace is authorized on his own motion to disqualify and send a criminal case to another township. Section 3414 R. S. No. 1929 clearly shows that such prosecutions shall be commenced and prosecuted in the township wherein the offense is committed. That part of this section applicable to this question is as follows:

"Provided, that all prosecutions before justices of the peace for misdemeanor shall be commenced and prosecuted in the township wherein the offense is alleged to have been committed: Provided further, that nothing herein contained shall prevent the defendant from taking a change of venue, as provided for in this article."

It will be noted that the last sentence of this paragraph permits the defendant to take a change of venue from the township if he so desires.

Section 3429 R. S. No. 1929, which deals with the question of change of venue of misdemeanors in justice courts, provides as follows:

"The defendant shall be entitled to a change of venue if he shall, before the trial of the case is commenced before the justice, or before the jury is sworn, file an affidavit, stating that the justice is prejudiced against him, or is a near relation to the injured party or prosecuting witness, stating in

what degree, or interested in the subject of the offense, or is a material witness in the case, or that the defendant cannot have a fair trial in the township, on account of the bias or prejudice of the inhabitants thereof, as the defendant verily believes."

We have made some research on this question and we find the case of State v. Sexton, 141 Mo. App. 694, is applicable and pertinent to your question. This case has been followed on a number of occasions and cited as recently as 220 Mo. App. 411. In the Sexton case the information was filed before a justice of the peace in a township in the county charging the defendant with a misdemeanor. A change of venue was taken to another justice of the peace before whom the defendant was tried and convicted and he appealed to the circuit court. In connection with this point the court in this case said, l. c. 698:

"* * * It is a general rule, that inasmuch as the justice of the peace has only such jurisdiction as the statute confers upon him, the facts giving such jurisdiction must affirmatively appear on the face of the proceedings. * * *"

And, at l. c. 699 the court again said:

"It must also be conceded by this court, that the Legislature has the undoubted right, in reference to statutory misdemeanors, to say in what particular jurisdiction they shall be tried, and to make that jurisdiction exclusive of all others. * * *"

At l. c. 700 the court again said:

"We believe it was the intention of the Legislature that the prosecution should be commenced in the township in which the alleged offense was committed. * * * *"

At l. c. 701 the court said:

"The jurisdiction of the justice before whom this information was filed, depended upon the question as to whether the alleged offense was committed in his township. As the evidence does not disclose, we cannot say that the justice had jurisdiction to try the defendant, and if no jurisdiction was in the justice court, none was acquired by the circuit court on appeal."

So, if the justice of the peace in your case, had no jurisdiction to try the case and if it was tried and appealed to the circuit court, then, under the ruling announced first above in the Sexton case, the circuit court had no jurisdiction. Since the justice of the peace acts by virtue of the statute and without such authority his acts are void, then, since the justice of the peace of Castor Township had no authority to transfer the case to St. Michael Township, then even if the case were before the justice in St. Michael Township, he had no jurisdiction and any proceeding in the latter township pertaining to this prosecution was null and void.

CONCLUSION.

From the foregoing it is the opinion of this department that a justice of the peace before whom a misdemeanor is filed is not authorized of his own motion to transfer such criminal case to another township and if he does do so the justice in the township to which such cause is

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transferred does not have jurisdiction to try the case and if he does hear and try the case and it is appealed to the circuit court, the circuit court has no jurisdiction to try this case.

Respectfully submitted,

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TWB:CP

APPROVED:

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