

The financial statement which has been furnished further shows that there is at present outstanding general bonded indebtedness to the amount of \$8,000.00 and that there is a balance in the sinking funds of \$259.36. The net indebtedness of the village would accordingly be at least \$7,740.00 applying all the balance of the sinking fund to the general indebtedness rather than to the special assessment bonds.

The present bond issue is in the amount of \$4,700.00, and it is proposed to issue these bonds without a vote of the people.

Section 3940 of the General Code specifically provides that the total indebtedness created in any one fiscal year by council of a municipal corporation without a vote of the people shall not exceed one-half of one percent of the total value of the property in such municipal corporation as listed and assessed for taxation. The village is therefore without authority to issue these bonds.

I further call your attention to the fact that the present net indebtedness being at least \$7,740.00 plus the proposed issue of \$4,700.00, would make an aggregate indebtedness of \$12,400.00, which is in excess of the one per cent limitation provided in Section 3941 of the General Code.

I am assuming that the present bonded indebtedness was not authorized by vote of the people. For these reasons, it is obvious that the issuance of these bonds by the village would be illegal, and I am therefore compelled to advise you to reject the same.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

299.

DISCHARGE—HOW PRISONER MAY BE DISCHARGED FROM JAIL—  
TUMEY CASE.

**SYLLABUS:**

*A prisoner may not be discharged from jail before the expiration of his sentence unless his case be reversed, or he be discharged under a writ of habeas corpus, or discharged under the Insolvent Debtors Act, or discharged under the Insolvent Prisoners Act, or paroled under the Indigent Prisoners Act.*

COLUMBUS, OHIO, April 7, 1927.

HON. E. A. BROWN, *Prosecuting Attorney, Circleville, Ohio.*

DEAR MR. BROWN:—I beg to acknowledge receipt of yours of April 2nd, reading as follows:

“Would you advise release of prisoners now in our county jail committed by the mayors and justices of the peace for the payment of fines for liquor violations?”

The only methods I know for releasing such prisoners prior to the expiration of their sentences is through a reversal of the judgment under which they were sentenced, through a discharge under a writ of habeas corpus, a discharge under the Insolvent Debtors Act (G. C. 11148 to 11155), or a parole under the Indigent Prisoner Act (G. C. 12382). General Code 2576 applies only where the fine is due the county.

Therefore, it is my opinion that there is no authority for the release of such prisoners prior to the expiration of their sentences without either an order from a court or a proceeding had by virtue of some statute authorizing such discharge.

In the case of Ed Tumey vs. the State of Ohio, the court was not called upon to go further than to hold the conviction voidable, which it did. However, in the case of Emanuel Williams vs. the State of Ohio, the Court of Appeals for Perry County, on a supplemental petition in error raising the question of the jurisdiction of the justice of the peace, held in substance that a justice of the peace in a prosecution under the Crabbe Act was without jurisdiction and discharged the defendant. In other words, the Court of Appeals of Perry county went a step further than the Supreme Court of the United States and said that such judgments were not merely voidable but void.

At the request of Honorable B. F. McDonald, Prohibition Commissioner, the case of Emanuel Williams vs. the State of Ohio will probably be taken to the Supreme Court for the purpose of settling definitely the question of whether such judgments are void or merely voidable.

In several cases of habeas corpus brought before Judge Kinkead of the Franklin county Common Pleas Court, writs were granted and the defendants discharged. However, in the case of In Re Paulus, Judge Blouser of the Ross county Common Pleas Court refused to issue a writ of habeas corpus.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

300.

#### CIGARETTES—LICENSE—DEFINITION OF WHOLESALE AND RETAIL DEALERS.

##### SYLLABUS:

*A company which buys bankrupt and fire sale stocks in which it acquires cigarettes and makes continued and repeated sales of such cigarettes in large quantities to retail dealers who re-sell the same in smaller quantities to consumers, and also sells such cigarettes at retail is engaged in both the wholesale and retail business of trafficking in cigarettes and is required to pay the wholesale license for engaging in such business in addition to the retail license which such company pays for engaging in the retail business.*

COLUMBUS, OHIO, April 8, 1927.

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

GENTLEMEN:—Acknowledgment is made of your request under date of April 1, 1927, for my opinion upon the following:

“We have received from the auditor of Williams county the following inquiry:

‘We have in this county a company who buys bankrupt and fire sale stocks and in some of these stocks they get cigarettes. This company takes out a retail license, but not a wholesale. We are informed that they sell cigarettes in large quantities to retail dealers at the same price they retail them from their store, therefore they claim that since they sell at one price to all that they do not come under the head of wholesalers. They sell any amount of cigarettes that a purchaser desires.’

You are respectfully requested to render this department your written opinion as to whether Sections 5894 to 5902 inclusive, of the General Code, would require this company to pay a wholesale license for the sale of cigarettes.”