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1. PRISONER CONFINED IN WORKHOUSE—CREDITS OF THREE DOLLARS PER DAY ON FINES AND COSTS—ALLOWABLE.
2. SUPERINTENDENT OF WORKHOUSE—NOT CHARGED BY LAW WITH DUTY TO ENFORCE AND COLLECT FINES AND COSTS FROM PAROLEE.

## SYLLABUS:

1. Credits of three dollars per day on fines and costs are allowable only when the prisoner is confined in the workhouse.
2. The superintendent of the workhouse is not charged by law with the duty of enforcing and collecting fines and costs from parolees.

Columbus, Ohio, August 18, 1949

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your letter requesting my opinion, which reads as follows:

“We are enclosing herewith a copy of letter received from our City of Toledo Examiner, in which he outlines certain procedure followed by the Superintendent of the Toledo City Workhouse.

“Your attention is directed to the provisions of Sections 4134, 4135, 4136, 12840, 12840-1 and 13451-9 of the General Code, pertaining to the parole of workhouse inmates. It is respectfully requested that you consider the enclosure herewith submitted, in connection with the foregoing, as well as other pertinent statutes, and give us your formal opinion in answer to the following questions:

“1. If the Court made no provision in his sentence that the defendant stand committed until his fine and costs have been paid, and the prisoner was paroled by the proper officer, may days on parole be applied on his fine and costs in the same manner as on his days to serve?

“2. If the answer to question 1 is in the negative, is it the duty of the officer issuing the parole to enforce collection of said fine and costs?”

In addition to the above request, you also submitted copies of commitment papers. The order of the court reads as follows:

“Defendant in Court on the . . . . day of . . . . ., 19. . . . Trial by jury waived. Defendant plead guilty. Defendant guilty and sentenced to 30 days in the House of Correction and to pay a fine of \$50.00 and costs taxed at \$4.70.

“By virtue of the foregoing sentence and in the name of the City of Toledo, State of Ohio, you are herewith commanded to receive the same . . . . . into your custody in the Toledo House of Correction of said city, and there to safely keep in the manner and for the time in said sentence set forth. To stand committed until paid or otherwise released according to law.”

or,

“and there to safely keep in the manner and for the time in said sentence set forth, or until discharged by due process of law.”

At my request you also submitted information as to whether any charge-back was made by the city against the subdivision from which prisoners have been committed. Your reply to same was in the negative.

It becomes necessary at this time to break down question I into two parts, viz.:

(a) Was the order of the court legally sufficient?

(b) If the court's order were legally sufficient, may days on parole be applied on his fine and costs in the same manner as on his days to serve?

It was noted in your request that reference was made to Section 13451-9 of the General Code, which reads:

“When a fine is the whole or a part of a sentence, the court or magistrate may order that the person sentenced remain in jail until such fine and costs are paid or secured to be paid, or he is otherwise legally discharged, provided that the person so imprisoned shall receive credit upon such fine and costs, at the rate of three dollars per day for each day's imprisonment; provided that no commitment under this section shall exceed six months, and this section shall not affect the laws relating to workhouses.”

This statute is not applicable to the instant question by virtue of the fact that it specifically states “this section shall not affect the laws relating

to workhouses." However, Section 13451-15 of the General Code is applicable and it provides :

"In cases where a fine may be imposed in whole or in part, in punishment of a misdemeanor, including the violation of an ordinance of a municipality and such judge or magistrate has authority to order that such person stand committed to the jail of the county or municipality until the fine and costs are paid, the court may order that such person stand committed to such jail or workhouse until such fine and costs are paid or secured to be paid, or he is otherwise legally discharged, provided, that the person so imprisoned shall receive credit upon such fine and costs, at the rate of three dollars per day for each day's imprisonment."

Section 13451-18 of the General Code provides :

"In all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the costs of prosecution, and if a jury has been sworn at the trial of a case, the fees of the jurors shall be included in the costs, which when collected, shall be paid to the public treasury from which the jurors were paid."

In the case of *State of Ohio, Plaintiff-Appellee, v. Charles Smith, Defendant-Appellant*, 19 O. Op. 454, the second branch of the syllabus reads :

"Section 13451-18, General Code, makes the costs in a criminal case, including violation of ordinances, as much a part of the sentence as the fine itself."

In the case of *In re: Albert Beall*, 26 O. S. 195, at page 195 the court said :

"The applicant was convicted of assault and battery in the Court of Common Pleas and was sentenced to imprisonment and the payment of a fine. After serving out his term of imprisonment, he was arrested on a writ of execution, no property being found, and again imprisoned. He now applies for a writ of habeas corpus, on the ground that the provision of the act of April 7, 1863 (S & S, 610, sec. 2), authorizing such arrest and imprisonment, does not apply to a case like his, where it was no part of the judgment that he should stand imprisoned till the fine and costs should be paid, or if the provision does so apply, then that it is unconstitutional. We think neither of these positions is maintainable. The statute plainly authorizes the proceeding

in all cases where a party has been adjudged to pay a fine; and we are aware of no provision of the constitution which it violates.”

The term “sentence” is defined in Words and Phrases, Vol. 38, at page 597, as :

“A fine and term of imprisonment originally provided for, for driving under the influence of intoxicating liquor, constituted the ‘sentence,’ and additional imprisonment for nonpayment of fine was simply method of carrying sentence into effect by enforcing payment.”

In the case of Picket v. The State, 22 O. S., 405, the third branch of the syllabus reads :

“The terms of a sentence of imprisonment ought to be so definite and certain, as to advise the prisoner and the officer charged with the execution of the sentence of the time of its commencement and termination, without being required to inspect the records of any other court, or the record of any other case.”

Upon checking the attached commitments I find that the sentence of the court is definite and certain as to the punishment and that the addition of the phrase “otherwise released according to law” in each of the copies submitted amply provides for the final release of a prisoner. In each of the orders the prisoner is apprized of the term for which he must serve and the amount of the fine and the costs to be paid. If unable to pay such fine and costs, days credit of three dollars per day is allowed him by law.

Now as to part two of question 1. It is noted in Section 13451-15 that credit on fine and costs is allowed for each day of confinement in the workhouse.

In Words and Phrases, Vol. 8, at page 558, it is said :

“The words ‘confined,’ ‘imprisoned,’ ‘in custody,’ ‘confinement,’ ‘imprisonment,’ refer not only to the actual, corporeal, and forcible detention of a person, but likewise to any and all coercive measures, by threats, menaces, or the fear of injury, whereby one person exercises a control over the person of another and detains him within certain limits.”

certain limits in the instant question being in the workhouse.

Sections 4128 to 4141, inclusive, of the General Code relate to workhouses. Section 4128 states who may be committed to a workhouse;

Section 4129 provides for the employment of prisoners; Section 4130 provides for cumulative sentences; Section 4131 provides for habitual offenders; Section 4132 provides for prompt commitment. The pertinent statutes are as follows:

Section 4133:

"An officer vested by statute with authority to manage a workhouse, may discharge, for good and sufficient cause, a person committed thereto. A record of all such discharges shall be kept and reported to the council, in the annual report of the officer, with a brief statement of the reasons therefor."

Section 4134:

"Such officer also may establish rules and regulations under which, and specify the conditions on which, a prisoner may be allowed to go upon parole outside of the buildings and enclosures. While on parole such person shall remain in the legal custody and under the control of the officer, and subject at any time to be taken back within the enclosure of the institution. Full power to enforce the rules, regulations and conditions, and to retake and reimprison any convict so upon parole, is hereby conferred upon such officer, whose written order shall be sufficient warrant for all officers named therein to authorize them to return to actual custody any conditionally released or paroled prisoner. All such officers shall execute such order the same as ordinary criminal process."

In the case of *Boyer, Superintendent, v. State ex rel. Halyburton*, 118 O. S. 582, at page 589, the court said:

"It must be understood that there are several methods of effecting the legal discharge of the accused, to wit, pardon by the governor, or parole, or release by credit upon the fine and costs at the rate of a dollar and a half per day, under Section 13717, General Code. Any of these methods would have effected a legal discharge of the prisoner." (Present law provides for \$3.00 credit under Section 13451-15.)

In *Opinions of Attorney General for 1927, Vol. 1, at page 641*, it was said:

"It may be urged that Section 4133, General Code, vests a pardoning power in those persons authorized to discharge prisoners by virtue of its provisions and that this statute is in violation of the pardoning power conferred on the governor by the constitution of the state of Ohio, Article III, Section 11. It is

true that the discharge of a prisoner by persons in charge of a workhouse for some frivolous or whimsical cause or even for the purpose of relieving congestion of the institution, would be an exercise of the pardoning power and therefore the operation of the statute would be unconstitutional. However, it is a rule of statutory construction that, if possible, statutes are to be so construed as to make them constitutional. So in a case where it appears that further confinement of a prisoner would be inhumane, the power to discharge such prisoner could be exercised by the authorities in charge of the workhouse."

In the case of *Jiha v. Barry*, 3 N. P. (N. S.) p. 65, at page 72 the court said:

"The discharge from the workhouse is not a *legal* right that belongs to any convict, for he had had all his legal rights in his trial; and such discharge is not a matter of *grace*, for that belongs only to the governor. It is an act of *humanity*, and can be authorized only in cases where a condition has arisen that makes the further confinement of the convict *inhumane*. This, of course, restricts the discharge of workhouse convicts to few and exceptional cases."

As to your second question, I am unable to find any statute charging the superintendent of the workhouse with the duty of collecting or enforcing a collection of fines and costs.

In view of the foregoing, it is therefore my opinion that:

1. Credits of three dollars per day on fines and costs are allowable only when the prisoner is confined in the workhouse.
2. The superintendent of the workhouse is not charged by law with the duty of enforcing and collecting fines and costs from parolees.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.