to one Josiah Hamilton. The deed in this case is signed by Owen Hamilton alone and there is no information contained in the abstract as to whether or not at the time of the execution of this deed, said Owen Hamilton was married or single.

On December 29, 1903, A. W. Mauk, guardian of Owen Hamilton, conveyed to Joseph O. Hamilton certain property in Benton Township, Hocking County, Ohio, which property I assume, is part of that here under investigation. The abstract of said deed, however, does not set out the description of the lands thereby conveyed, nor is there any reference in the abstract of said deed to any part of the abstract of title submitted, from which a description of the lands conveyed by said deed can be ascertained. In this situation, it is impossible to trace with any accuracy the subsequent history of the title to the lands here under investigation.

All of the above exceptions relate to lands, a part of which form the tract of land here under investigation; and the objections here made are obviously of such a nature as prevent my approval of the title of Mrs. Baird to this land. Whether such title can be corrected by further information, or by any proceedings on the part of said Mary Elizabeth Baird, I will not at this time undertake to say. I can at this time do nothing further than to disapprove said abstract of title and return the same to you with the request that you return the same to Mrs. Baird for such further action as she may desire to take with respect to the matter of clearing up the title to the lands here in question.

With said abstract of title, I am herewith returning to you the warranty deed, encumbrance estimate and the controlling board certificate submitted to me with your communication above referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3133.

CRABBE ACT—IMPRISONMENT OF FEMALE VIOLATORS IN OHIO REFORMATORY FOR WOMEN—COURTS HAVE POWER TO CORRECT RECORDS BUT NOT TO REMIT FINES OR SUSPEND SENTENCES—SECTION 2148-12a, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *Section* 2148-12*a of the General Code, which provides that, if a female is sentenced to pay a fine and costs as a whole or part of her sentence, which said fine and costs will cause imprisonment of thirty days or more, the court or magistrate may order that such female be remanded to the Ohio Reformatory for women until the fine and costs are paid or secured to be paid, and further providing for a credit of* $1.50 *per day for each day's imprisonment, construed as prohibiting the commitment of a female for non-payment of a fine and costs to the county jail or any other penal institution and as requiring the commitment to such Ohio Reformatory for Women, where such fine and costs will cause imprisonment of thirty days or more.*

2. *Since Section* 6212-17 *of the General Code provides, as the minimum sentence thereunder, a fine of* $100.00, *there is no authority in a court to commit a female violator of said section, for non-payment of fine, to any other penal institution than the Ohio Reformatory for Women.*

3. *Section 6212-17 of the General Code specifically prohibits the remission of any fine or part thereof, in cases of violation of the Crabbe Act, and no court has any authority to suspend, in whole or in part, any sentence imposed in such cases.*

4. *Courts have inherent power so to correct their records as to record correctly that which was actually done, but which was either omitted from the record or incorrectly therein set forth.*

COLUMBUS, OHIO, January 12, 1929.

HON. B. F. MCDONALD, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of December 13th, 1928, reading as follows:

> "I desire to submit to you the two following questions, to wit:—
>
> (1) Where a party charged with the violation of the Prohibition Law under the statute of Ohio pleads guilty or is convicted, has the Court the right, if such violator be a woman, to commit the violator to the County Jail or any other penal institution in the State, other than the Ohio Reformatory for Women at Marysville for the non-payment of the fine?
>
> (2) On October 24, 1928, a Municipal Court caused the following entry to be made in a case for violation of the Prohibition Law upon an affidavit and information filed under the Statute of Ohio, to wit:
>
> 'Defendant plead guilty and sentenced to pay a fine of $150.00 and costs, taxed at $5.10. $105.10 Paid. Execution of sentence stayed to Dec. 8, 1928.
>
> Under date of Dec. 8, 1928, the following entry made in the above case. Entry corrected to read $100.00 and costs, sentenced ordered enforced.'
>
> Has the Court the right to so correct such entry under the provisions of Section 6212-17 of the General Code of Ohio, which provides that no fine or part thereof imposed hereunder shall be remitted nor shall any sentence imposed hereunder be suspended in whole or in part thereof?"

A female person charged with and found guilty of violating the prohibition laws, commonly known as the Crabbe Act (G. C., Sections 6212-13 to 6212-20), is subject to fine, as provided in Section 6212-17, General Code, the pertinent part of which section reads:

> "Except as herein provided, any person who violates the provisions of this act (G. C., Secs. 6212-13 to 6212-20), for a first offense shall be fined not less than one hundred dollars nor more than one thousand dollars; for a second offense he shall be fined not less than three hundred dollars nor more than two thousand dollars; for a third and each subsequent offense, he shall be fined not less than five hundred dollars nor more (than) two thousand dollars and be imprisoned in the State Penitentiary not less than one year nor more than five years. * * * "

By the provisions of the statute last quoted, the minimum fine which could be imposed on the defendant, as a punishment for the first offense therein defined, was One Hundred Dollars. At the time the sentence was imposed, there existed statutory provisions authorizing the commitment of the violator to a county jail, workhouse or prison, until the fine and costs were paid or secured to be paid, or the

offender otherwise legally discharged, provided, however, the person so imprisoned should secure a credit on such fine and costs at the rate of $1.50 per day for each day's imprisonment.

However, Section 2148-12a, General Code, must be considered in connection with the statutes hereinbefore mentioned, which reads as follows:

> "When a female is sentenced to pay a fine and costs as a whole or part of her sentence, which said fine and costs will cause imprisonment for thirty days or more, the court or magistrate may order that said female so sentenced be remanded to the Ohio reformatory for women until such fine and costs are paid, or secured to be paid, or she is otherwise legally discharged, provided that the female so imprisoned shall receive credit upon such fine and costs at the rate of one dollar and fifty cents ($1.50) per day for each day's imprisonment; and provided, further, that this section shall not apply to imprisonment of females convicted of a violation of an ordinance of a municipal corporation."

With reference to the place of incarceration of women convicted of felonies or misdemeanors, except convictions for the violation of ordinances of municipal corporations, the General Assembly of Ohio, on May 15, 1911, passed an Act (102 O. L. 207, Sections 2148-1 to 2148-11, G. C.), making it mandatory that women should be incarcerated in the Ohio Reformatory at Marysville, as appears from the provisions of Sections 2148-1, 2148-5, 2148-6 and 2148-7, General Code, which sections, as later amended, now read:

> Sec. 2148-1: "The Ohio reformatory for women shall be used for the detention of all females over sixteen years of age, convicted of a felony, misdemeanor, or delinquency as hereinafter provided, and for the detention of such female prisoners as shall be transferred thereto from the Ohio penitentiary and the girls' industrial school as hereinafter provided, except that no female convicted of a violation of an ordinance of a municipal corporation shall be sentenced to or detained in said reformatory."
>
> Sec. 2148-5: "As soon as the governor shall be satisfied that suitable buildings have been erected and are ready for use and for the reception of women convicted of felony he shall issue a proclamation to that effect, attested by the secretary of state, and the secretary of state shall furnish printed copies of such proclamation to the county clerks of courts and from the date of said proclamation all portions of this act except those relating to the commitment of misdemeanants and delinquents shall be in full force and effect. Whenever additional buildings have been completed so as to care for misdemeanants and delinquents a proclamation shall be issued and published in the same manner and copies furnished to county clerks of courts and to all judges and magistrates having authority to sentence misdemeanants and delinquents and from and after the date of this proclamation all portions of this act relating to the commitment of persons to said reformatory shall be in full force and effect.
>
> All female persons convicted of felony, except murder in the first degree without the benefit of recommendation of mercy, shall be sentenced to the Ohio Reformatory for Women in the same manner as male persons are now sentenced to the Ohio State Reformatory. And in so far as applicable, the laws relating to the management of the Ohio State Reformatory and the control and management thereof, shall apply to the Ohio Reformatory for Women."

Sec. 2148-6: "Female persons over sixteen years of age found guilty of a misdemeanor by any court of this State shall be sentenced to the Ohio Reformatory for Women and be subject to the control of the Ohio board of administration, but all such persons shall be eligible to parole under the provisions of this act (G. C., Sections 2148-2, 2148-6, 2148-8 to 2148-10)."

Section 2148-7, General Code, as amended in 111 O. L., page 247, reads as follows:

"After the issuance of the first proclamation hereinbefore referred to, it shall be unlawful to sentence any female convicted of a felony to be confined in either the Ohio penitentiary or a jail, workhouse, house of correction or other correctional or penal institution, and after the issuance of the second proclamation it shall be unlawful to sentence any female convicted of a misdemeanor or delinquency to be confined in any such place, except in both cases the reformatory herein provided for, the girls' industrial school or other institution for juvenile delinquency, unless such person is over sixteen years of age and has been sentenced for less than thirty days, or is remanded to jail in default of payment of either fine or costs or both, which will cause imprisonment for less than thirty days, provided that this section shall not apply to imprisonment for contempt of court, or to females convicted of a violation of an ordinance of a municipal corporation."

It will be noted that Sections 2148-5, and 2148-6, supra, make it mandatory that the Ohio Reformatory for Women shall be used for the detention of females over sixteen years of age convicted of a felony, misdemeanor or delinquency.

Likewise, Section 2148-7, supra, makes it unlawful for a court to sentence any female over sixteen years of age, convicted of a felony, misdemeanor or delinquency, to imprisonment in the county jail or workhouse, except for a period less than thirty days, or to remand to a jail or workhouse, in default of payment of either fine or costs, or both, which will cause imprisonment therein for thirty days or more, except convictions for violations of ordinances of municipal corporations. It seems manifest from the provisions of the statutes, grouped in the chapter of the Code covering the subject of the Ohio Reformatory for Women, viz., Chapter 1a, Sections 2148-1 to 2148-12a, inclusive, that the intention of the Legislature was to require the incarceration of women in the Ohio Reformatory at Marysville in all cases where they were sixteen years of age or more, and the sentence imposed would require their imprisonment for thirty days or more. The general language used in the several statutes above quoted, clearly indicates such intention. When the Legislature amended Sections 2148-1, 2148-7 and 2148-9 and specifically enacted the supplemental Section 2148-12a of the General Code (111 O. L. 247), provision was made in said latter section that the court or magistrate *may order* said female so sentenced be remanded to the Ohio Reformatory for Women until such fine or costs are paid or secured to be paid, or she is otherwise legally discharged, provided that the female so imprisoned shall receive credit on such fine and costs at the rate of $1.50 per day for each day's imprisonment. In the same general act, as appears in the several provisions therein, viz., Sections 2148-1 and 2148-6, it was provided that the reformatory should be used for the detention of females over sixteen years of age convicted of a felony, misdemeanor or delinquency, and provision was made in the latter section that such persons "shall be sentenced to the Ohio Reformatory for Women", etc.

Prior to March 27, 1925, when the supplemental Section 2148-12a was added, the common pleas court of Guernsey County, in the case of *State ex rel. Kudrick* vs. *Meridith, Sheriff, etc.,* 24 N. P. (N. S.) 120, reviewed and interpreted the sections of the chapter with reference to the legality of a sentence of a female over sixteen years of age to imprisonment for thirty days or more. Judge Turnbaugh, on that phase of the case, held as appears in the headnote:

> "By force of Sections 2148-1, 2148-5, 2148-6, and 2148-7, General Code, judges, magistrates and mayors of municipalities not having police courts, have no jurisdiction or power to sentence female misdemeanants over sixteen years of age, to imprisonment in the county jail or workhouse except for periods less than thirty days, nor to remand to jail or workhouse in default of payment of either fine and costs, or both, which will cause imprisonment therein for thirty days or more, and a sentence imposed that will confine such female for a longer period is both unlawful and void."

The only pertinent change in the several existing statutes was the addition of the supplemental Section 2148-12a. It would seem, therefore, that notwithstanding the fact that the language of the section which says the court or magistrate *may order* that a female so sentenced shall be remanded to the Ohio Reformatory for Women until such fine and costs are paid, where such fines and costs will cause imprisonment for thirty days or more, the manifest intention collected from the context of the several statutes on the subject in reference to the place of imprisonment, is that the words "may order", as found in Section 2148-12a, should be read "shall order".

Sutherland on Statutory Construction, Vol. 2, Section 370, among other things says the following:

> "If upon examination the general meaning and object of the statute be found inconsistent with the literal import of any particular clause or Section, such clause or section must, if possible, be construed according to that purpose. But to warrant the change of the sense, according to the natural reading, to accomodate it to the broader or narrower import of the act, the intention of the Legislature must be clear and manifest."

The same author in Section 376 says:

> "The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the Legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act."

In the case of Ex parte Van Hagan, 25 O. S. 426, Judge Gilmore at page 430 of the opinion, gives the rule:

> "Repeals by implication are not favored, and in the case of two statutes, passed by virtue of the same constitutional authority, one will not be construed to repeal the other by implication, unless they are wholly irreconcilable by any fair mode of interpretation."

For the reasons above pointed out, and in specific answer to your first question, I am of the opinion that courts and magistrates may not lawfully sentence female misdemeanants over sixteen years of age to imprisonment in a jail, workhouse or house of correction or other correctional or penal institution, except for a period of less than thirty days, nor remand such person to a jail or workhouse in default of payment of either fine and costs, or both, when such a sentence will cause the defendant's imprisonment for thirty days or more, except in cases for contempt of court or conviction for violation of an ordinance of a municipal corporation. In this connection, it will further appear that either sentence under consideration herein would require the accused to be confined for a period longer than thirty days.

Coming now to your second question, it appears the sentencing court on a plea of guilty, on October 24, 1928, duly sentenced the defendant, as authorized by the provisions of Section 6212-17, General Code, heretofore quoted in the consideration of your first question, to pay a fine of $150.00 and costs taxed at $5.10, for the violation of the prohibition law commonly known as the Crabbe act. It appears from your question that the sentencing court at the same time entered the following: "$105.10 paid; execution of sentence stayed until December 8, 1928". Likewise the sentencing court, under date of December 8, 1928, made an entry ostensibly correcting the entry he made on October 24, 1928, in the following words and figures: "Entry corrected to read $100.00 and costs, sentenced ordered enforced." If the entry was corrected to read as above stated, it is difficult to see how there would remain any sentence to be ordered enforced. However, with reference to the power and authority of the sentencing court to correct his entries, your attention is directed to my opinion No. 2184, issued June 1, 1928, wherein it was held as disclosed by the first branch of the syllabus that:

> "Where a court, in passing sentence in a criminal case, has acted under a misapprehension of the facts necessary and proper to be known in fixing the amount of the penalty, it may, in the exercise of judicial discretion, and in furtherance of justice, at the same term, and before the original sentence has gone into operation, or any action has been had upon it revise and increase or diminish such sentence within the limits authorized by law."

Attention is also directed to the case of In Re Fenwick, 110 O. S. 350, wherein it was indicated that when a sentence is invalid, the court, during the same term, was empowered to re-sentence. The context of the full entry, a copy of which is submitted in your question, would indicate, to my mind, that the court sentenced the accused to pay $150.00 and costs; and that the accused paid $100.00 on the fine and costs, or a total of $105.10, which left a balance of $50.00 of the sentence which the court ordered enforced.

On January 12, 1928, I rendered an opinion, No. 2088, on the general subject, the first and second branches of the syllabus of which read:

> "1. By the terms of Section 6212-17, General Code, the municipal court of Toledo is without authority to remit any fine or part thereof imposed in cases involving violations of the Crabbe Act and such court is without authority to suspend in whole or in part any sentence imposed in such cases.
>
> 2. By the terms of Section 13706, General Code, the municipal court of Toledo is without authority to suspend the imposition of sentence and place a defendant on probation in cases charging a violation of the Crabbe Act (Sections 6212-13 to 6212-20, General Code), where the defendant has pleaded or been found guilty."

If the sentence as imposed by the court, viz., $150.00, was erroneous, and the court in fact, on October 24, 1928, actually sentenced the accused to pay $100.00 and costs, I am of the opinion the sentencing court had a right to correct the entry. Pertinent to this question is the former opinion, No. 1830, of this office, rendered March 9, 1928, and addressed to Hon. P. E. Thomas, Warden, Ohio Penitentiary, the first branch of the syllabus of which is as follows:

> "It is the duty of a court and it has power at any time to make an order correcting a mistake in the record of a judgment. A court has power to amend its records so as to make them conform to the truth even after the term has expired."

However, if what the court did on December 8, 1928, was to change the sentence imposed, the effect of which was to remit the payment by the accused of the sum of $50.00, then I am of the opinion that the court was without lawful power to do so. Giving the entry as it appears of record, however, the most favorable interpretation, it would seem that the entry as first entered was erroneous and a later one made to correct the error. Upon the latter hypothesis, it would appear the sentencing court had the power and authority to correct the entry.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3134.

ROADS—COUNTY—EXTENT OF USE OF GASOLINE TAX FOR WIDENING ROADS AND DEFINING DITCHES—SECTION 5654-1, GENERAL CODE, CONSIDERED.

SYLLABUS:

1. *Roads on county highway systems may be widened and the ditches along them may be defined by the use of funds derived from the gasoline excise tax, only to such an extent as is reasonably necessary to keep them in or restore them to, a proper condition for travel.*

2. *Where a road has been advertised for construction, all bids rejected and a resolution adopted authorizing the county surveyor to build the road by force account, the county commissioners cannot proceed to issue notes in anticipation of a bond issue under Section* 5654-1, *General Code, for the financing of such construction.*

COLUMBUS, OHIO, January 14, 1929.

HON. FRANK L. MYERS, *Prosecuting Attorney, Mt. Gilead, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

> "We are asking for an opinion from you concerning some matters of import to our county:
>
> Question 1: To what extent may the county use the money derived from the gasoline tax for the maintenance and repair of roads on the county road system, if in the future permanent improvement is contemplated?