

Upon examination of said abstract of title, I find that Elizabeth McManis has a good and indefeasible fee simple title to each of said tracts of land, free and clear of all encumbrances whatsoever.

An examination of the warranty deed tendered by said Elizabeth McManis shows that same has been properly executed and acknowledged by her and by her husband, J. O. McManis, and that said deed as to form is sufficient to convey to the State of Ohio a fee simple title to the above described tracts of land, free and clear of all encumbrances and free and clear of the inchoate dower right of said J. O. McManis.

An inspection of the encumbrance estimate No. 129, submitted as part of the files relating to the purchase of the property here under investigation, shows that the same has been properly executed, and that there are sufficient balances in the proper appropriation account to the credit of the Ohio Agricultural Experiment Station to pay the aggregate purchase price of the three several tracts of land above described, said purchase price being the sum of \$650.00.

It further appears from the certificate of the Controlling Board that said board, acting under the authority of Section 11 of House Bill No. 510, 88th General Assembly, has released the above stated sum of \$650.00 for the purchase of this property.

I am herewith returning with my approval said abstract of title, warranty deed, encumbrance estimate No. 129, controlling board certificate and other files relating to this purchase.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1740.

JUSTICE OF PEACE—UNAUTHORIZED TO SUSPEND FINE FOR VIOLATION OF SECTIONS 12604 ET SEQ., GENERAL CODE—AUTHORIZED TO SUSPEND SENTENCE AND PAROLE DEFENDENT ON CONDITION THAT COSTS OF PROSECUTION ARE PAID.

SYLLABUS:

A justice of peace has no authority to remit or suspend the payment of a fine for a violation of Sections 12604 et seq., of the General Code. However, he may suspend the imposition of sentence and place the defendant on probation under control and supervision of a probation officer with the condition that the costs of prosecution be paid by the defendant.

COLUMBUS, OHIO, April 7, 1930.

HON. WINSTON W. HILL, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date in which you request my opinion on the following question:

“May a justice of peace suspend a fine imposed for a violation of Section 12604 of the General Code, but require the defendant to pay the costs of prosecution?”

Sections 12604 to 12604-2, inclusive, provide certain regulations requiring drivers of vehicles upon the highways to come to a complete stop on approaching school busses receiving or discharging passengers. Section 12604-3 of the General Code

provides the penalty for violation of the foregoing sections. Section 12604-3 provides as follows:

“Whoever, being the driver of a vehicle or school bus, fails to carry out the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten nor more than one hundred dollars or be imprisoned in the county jail not to exceed thirty days, or both.”

The office of a justice of the peace, on January 1, 1913, ceased to be a constitutional office and the Legislature established such offices in the townships of the several counties of the state. The jurisdiction, powers and duties of the office of justice of peace were provided by acts of the Legislature. Since the office of the justice of peace is created by the Legislature, therefore a justice of peace has only such authority as is granted him by statute. Statutes of Ohio do not authorize a justice of peace to suspend or remit the payment of a fine.

While the statutes of Ohio do not give the justice of peace authority to remit or suspend the payment of a fine, authority is granted to him by the provisions of Section 13452-1 of the General Code to suspend the imposition of a sentence and place a defendant on probation. Section 13452-1 of the General Code provides as follows:

“In prosecutions for crime, except as mentioned in Section 6212-17 of the General Code, and as hereinafter provided, where the defendant has pleaded, or been found guilty and it appears to the satisfaction of the judge or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and the public good does not demand or require that he be immediately sentenced, such judge or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law, and upon such terms and conditions as such judge or magistrate may determine; provided, that juvenile delinquents shall not be included within this provision.”

This section clearly authorizes a magistrate, which includes a justice of the peace, to suspend the imposition of sentence for violation of Sections 12604 et seq., of the General Code and to place the defendant on probation under control and supervision of a probation officer as provided in Sections 13452-3 to 13452-9, inclusive, of the General Code.

The question arises at this point whether or not a justice of peace may suspend the imposition of a sentence, but require the defendant to pay the costs of prosecution. This question, I believe, is answered by the provisions of Section 13451-8 of the General Code, which provides as follows:

“When any person shall be convicted of a misdemeanor punishable either by fine or imprisonment, or both, the court may award against such offender a conditional sentence, and order him to pay a fine with or without the cost of prosecution within a limited time to be expressed in the sentence, and in default thereof, to suffer such imprisonment as is provided by law and awarded by the court. The court may also place such an offender on probation, with the condition that he pay a fine and costs or either of them, as the case may be, in installments within a limited time, and may,

in case of the default in any of such payments, impose such sentence as is provided by law.

The person against whom such conditional sentence shall be awarded, shall be forthwith committed to the custody of an officer of the court, until such sentence be complied with; and if he shall not pay the fine within the time limited he shall be committed to the county jail, and it is hereby made the duty of the sheriff in such case, to execute the sentence according to the terms thereof."

The pertinent portion of this section, relative to your inquiry, is "The court may place such an offender on probation, with the condition that he pay a fine and costs *or either of them*, as the case may be, in installments within a limited time". This section authorizes a justice of peace in misdemeanor cases to place a defendant on probation with the condition that he pay the costs of prosecution.

In specific answer to your inquiry, I am of the opinion that a justice of peace has no authority to remit or suspend the payment of a fine for a violation of Sections 12604 et seq., of the General Code. However, he may suspend the imposition of sentence and place the defendant on probation under control and supervision of a probation officer with the condition that the costs of prosecution be paid by the defendant.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1741.

APPROVAL, BONDS OF WILLOUGHBY RURAL SCHOOL DISTRICT,
LAKE COUNTY—\$12,900.00.

COLUMBUS, OHIO, April 7, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1742.

COURTS—PROBATE AND COMMON PLEAS COMBINED—COMMON
PLEAS JUDGE MAY ISSUE DANCE PERMITS OUTSIDE MUNICIPALITIES.

SYLLABUS:

When the Probate Court and Common Pleas Court of a county have been combined, the common pleas judge may issue a permit for the holding of a public dance in a township outside a municipality under Section 13393, General Code.

COLUMBUS, OHIO, April 7, 1930.

HON. E. S. YOUNG, *Prosecuting Attorney, West Union, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication presenting the following inquiry: