

discharged by the sheriff; afterwards the person who assumed the payment of the fine imposed in the county court failed to pay it, and the sheriff re-arrested the defendant and placed him in jail; he sued out a writ of habeas corpus the judge of the superior court, on the hearing, refused to discharge the prisoner, and committed him to answer before the superior court for the same charge on which he had been tried, convicted and sentenced in the county court.

HELD, That this was error. When the sheriff discharged the prisoner, taking the promise of another to pay the fine, he could not afterward hold the defendant or arrest him for not paying it. By making this arrangement, the sheriff became liable for the amount of the fine, and must look to the person on whose promise he acted. The defendant was not liable to arrest and imprisonment for a failure to pay."

104 Ga. 333;
30 S. E. 812;
8 Bush. Ky. 131.

Lambert vs. Sheriff, Pike County Common Pleas, Waverly, Ohio.

Defendant released. Court holding after security is given for a fine, defendant cannot be again imprisoned.

When such fine and costs are "secured to be paid," defendant is released and cannot be again imprisoned at any time thereafter for the offense for which he was sentenced. The bond is a payment as far as the fine is concerned, and a new obligation is created. The state must thereafter look to the bond for payment, such bond not being like one for the appearance of the defendant. The taking of such a bond would not be a suspension of the fine secured by a payment thereof.

This answers both your third and fourth questions.

Respectfully,
C. C. CRABBE,
Attorney-General.

1030.

TAX LEVY—LIBRARY PURPOSES—WHAT CERTIFICATION TO BOARD OF EDUCATION BY LIBRARY TRUSTEES SHOULD INCLUDE—SECTION 7639 G. C. CONSTRUED.

SYLLABUS:

In the certification to the board of education by the board of library trustees, of the amount of money needed for library purposes as authorized and required by section 7639 General Code, it is not intended that such certification include the amount necessary to pay the interest and principal of the library debt.

COLUMBUS, OHIO, December 24, 1923.

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

GENTLEMEN:—Yours of recent date received, in which you submit for an opinion the following inquiry:

"In the certification to the board of education by the board of library trustees, of the amount of money needed for library purposes, as authorized and required by section 7639 G. C., may such library trustees include the amount necessary to pay the interest and principal of the library debt as it comes due?"

Section 7639 General Code, to which you refer, reads as follows:

"Such board of library trustees annually, during the month of May, shall certify to the board of education the amount of money needed for increasing, maintaining and operating the library during the ensuing year in addition to the funds available therefor, from other sources. The board of education annually shall levy a tax of not to exceed one and one-half mills for such library purposes, which tax shall be in addition to all other levies authorized by law, and subject to no limitation on tax rates except as herein provided."

This section seems only to provide for levying of a tax for *increasing, maintaining and operating a library* under the management and control of a board of trustees elected by a board of education.

I find from other statements submitted by you that the library debt to which you refer is one created by a bond issue for the purpose of building a library building and it seems the bonds were issued under the provisions of sections 4007 to 4013, General Code, inclusive.

Section 4013 General Code reads as follows:

"For the purpose of creating a sinking fund for the extinguishment of the bonds provided for in the preceding sections, the library board each year until the payment of the bonds are fully provided for, may levy and collect a tax in addition to other taxes authorized to be levied by it, which shall not exceed two and one-half tenths of a mill upon the taxable property of the district taxed for the support of the library. Such tax shall be paid into the treasury of the board, and on order of the public officer charged by law with the duty of drawing warrants upon such treasury paid into the sinking fund hereinafter provided for, and by the trustees thereof applied, by order of the library board, to the extinguishment of such bonds, and to no other purpose whatever. The taxes so levied shall be certified and placed on the tax list and collected in the same manner as other taxes of the taxing district, and such tax shall be a lien upon the property on which it is assessed, the same as state and county taxes, and subject to the same penalties if delinquent."

This language, in connection with the language of section 4007, furnishes sufficient authority for any public library board to levy a tax for such bond issue. Sections 4014 to 4018, General Code, inclusive, provide for a library sinking fund. Section 4017 General Code, one of the sections with reference to the library sinking fund, reads as follows:

"In the month of May in each year, and oftener if required, the trustees of such sinking fund shall certify to the library board the rate of tax, not to exceed the limit herein provided, necessary to provide a sinking fund for the payment of all bonds issued by authority of law for library purposes in such taxing district together with the amount necessary to be levied to provide for the

payment of interest thereon, and *the library board shall levy the amount so certified*. Such board may increase the amount so certified, but the total amount so levied shall not exceed the limitation herein provided."

The phrase underscored is additional authority to such library board to levy the necessary tax for such bonds and interest thereon.

After a careful reading of the sections of the General Code above quoted, it is not believed that the certification by the board of library trustees to the board of education of the amount of money needed for the ensuing year, as provided in section 7639 G. C., is intended to include funds for the interest and payment of the library debt created by a bond issue under the provisions of sections 4007 to 4013 General Code. The provisions of sections 4013 and 4017 General Code are clearly sufficient to authorize the board of library trustees, as such, to levy a tax for the payment of the interest and retirement of such bond issue.

Attention is also directed to the provision of section 5649-1b, which was in effect at the date of the issuance of the bonds in question. Said section provides in part as follows:

"The resolution, ordinance or other measure under which bonds are issued or authorized shall, within the limitations prescribed by law, provide for a levy of taxes, in the manner prescribed by law, sufficient to pay the interest and principal of the bonds as they mature and every such resolution, ordinance or measure shall be certified by the fiscal officer of the political subdivision to the county auditor of the county in which the subdivision is located. Thereafter, the county auditor, without further action by the tax levying authority of the subdivision, shall include said annual levies in the appropriate annual budgets submitted by him to the budget commissioners as provided in section 5649-3c of the General Code, * * *"

If proper certification by the fiscal officer of the political subdivision issuing such bonds has been made to the county auditor of the county in which the subdivision is located, as provided in section 5649-1b, supra, further certification of the amount necessary to pay the interest and principal of the library debt would be unnecessary.

Therefore, I am of the opinion that in the certification of the board of education by the board of library trustees, of the amount of money needed for library purposes as authorized and required by section 7639, General Code, it is not intended that such certification include the amount necessary to pay the interest and principal of the library debt.

Respectfully,
C. C. CRABBE,
Attorney-General.

1031.

INSURANCE—SUPERINTENDENT OF INSURANCE IS "COMMISSIONER"
UNDER BLUE SKY LAW—SECTIONS 6373-14, 6373-16 AND 6373-19 G.
C. CONSTRUED.

SYLLABUS:

The superintendent of insurance is the "commissioner" under the blue sky law of Ohio, not only to issue his certificate as provided in sections 6373-14 and 6373-16 G. C., in proper insurance cases and therein designate the terms and conditions under which