

2213.

MAYOR'S COURT—WHERE ACCUSED FOUND GUILTY OF OFFENSE—DUTY OF MAYOR TO PRONOUNCE JUDGMENT PROVIDED BY LAW—CANNOT GIVE PRISONER CHOICE OF CONTRIBUTING TO SALVATION ARMY OR SOME OTHER PARTY—MAYOR NOT AUTHORIZED TO SUSPEND OR REMIT PAYMENT OF FINE—WHEN MAYOR MAY SUSPEND EXECUTION OF SENTENCE—MAYOR NOT FINANCIALLY LIABLE FOR ERRORS IN JUDGMENT IN RENDERING HIS DECISIONS—UNAUTHORIZED ATTEMPTED SUSPENSION OF FINE CANNOT OPERATE AS SUSPENSION IN LEGAL CONTEMPLATION.

1. *Where a mayor finds an accused guilty of an offense which he has jurisdiction to determine, it is duty to pronounce the judgment provided by law.*

2. *A mayor is not authorized to suspend or remit the payment of a fine. However, under the probation laws, where the accused has been sentenced to imprisonment until a fine is paid, he may suspend the execution of the sentence, granting the defendant time to pay the fine. This action must be taken before the sentence is carried into execution.*

3. *There is no authority whereby a mayor may legally suspend a fine on condition that the defendant pay a stipulated sum to some other party.*

4. *A mayor cannot be held financially liable for errors in judgment in rendering his decisions, when acting as a magistrate. However, an unauthorized attempted suspension of a fine cannot operate as a suspension in legal contemplation, and under such circumstances the judgment is still in force and may be collected as provided by law.*

COLUMBUS, OHIO, June 30, 1921.

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

GENTLEMEN:—Your recent communication is as follows:

"We are respectfully requesting your written opinion upon the following matters relative to the conduct of the mayor's court in the city of 'X.'

'A' is brought before the court on the charge of keeping a place where intoxicating liquor is sold and it is not the first offense. Formal trial is not held and no record made of the case. The mayor adjudges the prisoner guilty and gives said prisoner the choice of paying a fine of \$400.00 or contributing \$500.00 to the Salvation Army. The prisoner accepts the latter.

Question 1. Is a mayor authorized to render such a decision? If not, can he be held financially liable for the amount of fine?

'B' is brought before the court charged with speeding. No formal trial is held and no record made of the case. The mayor gives the prisoner the choice of paying a fine of \$50.00 or paying \$25.00 to the Salvation Army. The captain of the Salvation Army is called in and the payment is made to him directly by the prisoner.

Question 2. Is a mayor authorized to render such a decision? If not, can he be held financially liable for the amount of fine?

A special fund is kept for charity purposes. This fund is not a part of the official records of the auditor and treasurer but the money is kept by the director of public service and paid out by him, he keeping a memorandum record.

'C' is brought before the court on the charge of violation of section 13195 G. C. This case is docketed. The mayor renders judgment for fine of \$500.00 and costs. The fine is suspended on condition that the defendant pay \$100.00 to the special fund described above.

Question 3. Is a mayor authorized to render such a decision? If not, can he be held financially liable for the amount of fine?

In a number of cases for violation of section 13195 G. C., as well as other offenses, fine and costs are rendered as the sentence and a part of the fine is suspended on condition that the defendant pay a certain amount to the special charity fund described above.

Question 4. Is a mayor authorized to render such a decision? If not, can he be held financially liable for the fine?"

From the statement of facts submitted upon which your first and second questions are based, it is difficult to determine whether the action taken by the mayor amounts to an attempt to suspend the fine or whether said action constitutes a failure to pronounce sentence on the accused.

It is clear from the facts stated upon which your third and fourth questions are based, that the action therein taken amounts to an attempt to suspend the fine.

This department in an opinion rendered to your bureau, reported in Opinions of the Attorney-General, 1919, p. 1542, gave consideration to the authority of a mayor or magistrate to suspend or modify a sentence, to which reference is hereby made. Also, Opinion No. 1822, found in Opinions of the Attorney-General, 1921, considers to some extent the provisions of the probation statutes. In the latter opinion reference was made to the case of Dillon vs. State, 38 O. S. 586, in which it was held "when the accused is properly convicted, it is the duty of the court to pronounce the judgment provided by law." It was further said in said opinion of the Attorney-General: "A court or magistrate is neglectful of duty and in default thereof when there is failure to pronounce the judgment provided by law."

In the event that the facts stated in connection with your first and second questions show that the mayor failed to pronounce sentence, what has heretofore been said will clearly dispose of the first part of said first and second questions. If, however, the action taken should amount to a suspension of the fine, what is hereinafter said relative to your third and fourth questions will be applicable to the first and second questions.

In the former opinion above referred to it was pointed out clearly that the only authority a mayor has to suspend a sentence is under the authority of the so-called probation statutes, found in sections 13706 to 13715, inclusive, of the General Code.

Said opinion pointed out that there were certain limitations mentioned in said sections and that the mayor had authority to suspend or modify a sentence, subject to the limitations therein mentioned. It was further pointed out that under the provisions of the law any action taken by the court in reference to this procedure in any case proper for such action, must be taken before the sentence is carried into execution. From your statement of facts in the cases mentioned it does not appear whether or not that sentence had been carried into execution.

However, in view of your questions, it seems important to give special consideration to the provisions of section 13711 G. C., which provides:

"When the sentence of the court or magistrate is that the defendant be imprisoned in a workhouse, jail, or other institution, except the

penitentiary or the reformatory, or that the defendant be fined and committed until such fine be paid, the court or magistrate may suspend the execution of said sentence and place the defendant on probation, and in charge of a probation officer named in such order, in the following manner:

(1.) In case of sentence to a workhouse, jail or other correctional institution, the court or magistrate may suspend the execution of the sentence and direct that such suspension continue for such time, not exceeding two years, and upon such terms and conditions as it shall determine;

(2.) In case of a judgment of imprisonment until a fine is paid, the court may direct that the execution of the sentence be suspended on such terms as it may determine and shall place the defendant on probation to the end that said defendant may be given the opportunity to pay such fine within a reasonable time; provided, that upon payment of such fine, judgment shall be satisfied and the probation cease."

It will be noted that under the provisions of this section there are two conditions referred to; first, where the sentence is to a workhouse, jail or other correctional institution, and, second, in case of a judgment of imprisonment until a fine is paid. In the former case it would seem that the court may suspend the execution of sentence upon such terms as he deems advisable. However, from the provisions of the second paragraph referred to, it is clear that it is not contemplated by the statutes that the payment of the fine shall be suspended or remitted; rather, authority is given only to grant time for the payment of the same.

Applying the provisions of this section to the statement of facts submitted, it seems clear that the court had no authority to suspend the sentence under such conditions. As heretofore pointed out, it is the duty of a court to pronounce the sentence imposed by law. It is indisputable that the orders made relative to the payment of the fine were wholly erroneous. Whether we regard the court's action as a suspension of the fine or failure to pronounce the sentence imposed by law, the conclusion must be the same, that is, that the order made was not proper. What has been said will dispose of the first part of all of the questions presented.

Coming now to the latter part of each question, as to whether or not the court can be held financially liable for the amount of the fine, it is believed that that question must be answered in the negative.

While the action taken is obviously without authority of law, yet it is an order made by a judicial tribunal, and it is believed that the action of a court cannot be questioned, excepting in a procedure which would authorize a higher authority to review the same.

Notwithstanding the apparent erroneous orders made in the cases described, no law has come to my attention which will authorize your bureau to hold such a magistrate financially liable for errors of judgment as to the extent of his powers. It is suggested that your bureau can properly point out to such officials the irregularity and make suggestions in connection therewith. If such an official should wantonly refuse to comply with the instructions given, it may be that such wanton disregard for the duties imposed by law would constitute a cause of removal by the governor. However, as above indicated, notwithstanding that the action taken causes a financial loss to the city, there seems to be no authority whereby such a court can be held financially liable for errors of judgment.

However, it should be further noted in this connection that the attempt

of the court to suspend a fine in violation of the provisions of law cannot operate as an actual suspension in legal contemplation. Therefore, it would seem that the fines imposed in the cases you mention are still owing to the state. In an opinion of my predecessor, found in Opinions of the Attorney-General, 1918, p. 362, the syllabus reads:

“A mayor is without authority to allow fines and costs in cases to go unpaid and if he does so, such fines and costs may be recovered as follows:

In cases of violations of municipal ordinances, recovery can be had in the name of the corporation, as provided in sections 4561 and 4562 of the General Code, but these suits must be commenced within one year after the violation of the ordinance.

In the case of a violation of an ordinance, where resort cannot be had to these sections, and in state cases, mandamus will lie against the mayor, at the instance of the interested party, to compel him to issue execution on the judgment for fines. At the instance of the officers to whom costs in these cases are due, mandamus will also lie against such mayor to compel the issuance of the execution to collect the costs in these cases.”

It would seem that the above holding is applicable to the cases you present wherein the fines were not collected after having been assessed, and collection may be made as provided by law.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2214.

COUNTY HOSPITAL—PATIENTS ARE “SUBJECTS FOR CHARITY”—  
BILLS FOR TREATMENT SHOULD BE PAID BY HOSPITAL TRUSTEES FROM MAINTENANCE FUND PROVIDED FOR SAID HOSPITAL BY SECTION 3133 G. C.

*Where, pursuant to section 3137 G. C. (108 O. L., Part I, p. 258), the trustees of a county hospital find and determine that patients presented to said hospital for treatment are “subjects for charity”, said trustees are without authority to present to the county commissioners bills for the treatment of such patients, and the county commissioners are without authority to pay said bills from county funds. Said bills should be paid by the hospital trustees from the maintenance fund provided for said hospital by section 3133 G. C.*

COLUMBUS, OHIO, June 30, 1921.

HON. V. W. FILIATRAULT, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your letter is at hand, reading thus:

“Operating under sections 3127 to 3138 of the General Code an election was held, question favorably voted upon, bonds issued, a county hospital purchased, trustees appointed and levies made for hospital purposes by Portage county, Ohio.

Section 3137, among other things, provides as follows: